रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

# भारत का राजपत्र
# The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 39] नई दिल्ली, सितम्बर 22—सितम्बर 28, 2019, शनिवार/भाद्र 31—आश्विन 6, 1941
No. 39] NEW DELHI, SEPTEMBER 22— SEPTEMBER 28, 2019, SATURDAY/BHADRA 31—ASVINA 6, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

## भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

## Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

### कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

**(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 11 सितम्बर, 2019

**का.आ. 1735.**—केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार, गृह विभाग, की अधिसूचना सं. 12/1(2)/2017-एच(सीबीआई) (एमडीएस), दिनांक 6 मई, 2019 के माध्यम से प्राप्त सहमति से मणिपुर विकास संस्था (एमडीएस) में वित्तीय अनियमितताओं के संबंध में भा.दं.संहिता की धारा 420/403/409/120-बी/34 एवं भ्रष्टाचार निवारण अधिनियम की धारा 13(i)(सी) के अधीन सतर्कता पुलिस थाना के मामला एफआईआर सं.3(08)2017 के साथ समामेलित इम्फाल पुलिस थाना में भा.दं.संहिता की धारा 420/406/120-बी/409/34 एवं भ्र. नि. अधिनियम, 1988 की धारा 13(2) के अधीन दर्ज एफआईआर सं. 244(9)2017 में मामले का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य में करती है।

[फा. सं. 228/24/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**

**(Department of Personnel and Training)**

New Delhi, the 11th September, 2019

**S.O. 1735.—**In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Manipur, Home Department issued vide Notification No.12/1(2)/2017-H(CBI)(MDS) dated the 6th May, 2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Manipur for carrying out investigation into case under FIR No.244(9)2017 U/s 420/406/120-B/409/34 IPC & 13(2) P.C Act, 1988 of Imphal Police Station amalgamated with case FIR No. 3(08)2017 of Vigilance Police Station U/s 420/403/409/120-B/34 IPC & 13(i)(c) P.C Act in connection with financial irregularities in Manipur Development Society (MDS).

[F. No. 228/24/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 11 सितम्बर, 2019

**का.आ. 1736.—**केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उन अपराधों को, जिन्हें भी दिल्ली विशेष पुलिस स्थापना के सदस्यों द्वारा अन्वेषित किए जाने हैं, एतद्वारा विनिर्दिष्ट करती है, नामतः -

(क) असम निवेशकों के की सुरक्षा (वित्तीय संस्थानों में) अधिनियम 2000 (एपीआईडी अधिनियम-2000)।

(ख) उपर्युक्त अपराधों के संबंध में या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा उन्हीं तथ्यों से उत्पन्न अथवा उसी संव्यवहार में किए गए या किसी अन्य अपराध या अपराधों हेतु।

[फा. सं. 228/21/2019-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 11th September, 2019

**S.O. 1736.—**In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the offence which are also to be investigated by members of the Delhi Special Police Establishment namely:-

(a) Assam Protection of Interests of Depositors (in Financial Establishments) Act-2000 (APID Act-2000).

(b) Attempts, abetments, and conspiracies in relation to or in connection with above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/21/2019- AVD-II)]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1737.—**केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए त्रिपुरा राज्य सरकार, गृह विभाग की अधिसूचना सं. एफ.21(2)-पीडी/2012(पी-I)/2947 दिनांक 04.11.2017 के माध्यम से प्राप्त सहमति से प्रोफ़ेसर पी.के.बोस, भूतपूर्व निदेशक, एनआईटी अगरतला एवं अन्य के द्वारा 2008 से 2012 की अवधि के दौरान विद्युत एवं सम्बद्ध विभाग में सॉफ्टवेयर एवं हार्डवेयर के क्रय में बरती गई अनियमितताओं एवं राशि के गबन, फर्नीचर की खरीद,

नेटवर्क कनेक्टिवटी के निष्पादन एवं नियुक्तियों इत्यादि में की गई अनियमितताओं में भारतीय दंड संहिता की धारा 409, 420, 120 बी तथा भ्रष्टाचार निवारण अधिनियम,1988 की धारा 13(1)(डी) के तहत जिरानिया पुलिस थाना मामला संख्या 2015 जेआरएन046 दिनांक 09.12.2015 तथा जिसकी सीआईडी त्रिपुरा द्वारा जांच की जा रही है, से संबंधित अपराधों के अन्वेषण/आगे का अन्वेषण करने के लिए तथा उपर्युक्त अपराधों के संबंध में किए गए दुष्प्रयासों, दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए अथवा उन्हीं तथ्यों से उत्पन्न प्रासंगिक किसी अन्य अपराध/अपराधों का अन्वेषण करने के लिए और साथ ही दोषी व्यक्ति के विरुद्ध आपराधिक अभियोजन चलाने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त त्रिपुरा राज्य में करती है ।

[फा. सं. 228/58/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1737.—**In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Tripura, Home Department issued vide Notification No.F.21(2)-PD/2012 (P-I)/2947 dated 04.12.2017 hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment in whole of the State of Tripura for investigation/further investigation of the offences relating to Jirania PS Case No.2015JRN046 dated 09.12.2015 u/s 409, 420, 120-B IPC and section 13(1)(d) of P.C Act, 1988 against Professor P.K Bose, Ex-Director, NIT Agartala & others being investigated by CID Tripura regarding irregularities and embezzlement of funds in purchase of Software & Hardware in Electrical and Allied Department, purchase of furniture, in execution of network connectivity and in appointments etc., during the year 2008 to 2012 and any other offence/offences, attempt, abetments & conspiracy in relation to or in connection with the above mentioned offences and any other offence/offences committed in course of the same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[F. No. 228/58/2017-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1738.—**केंद्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों को दिल्ली विशेष पुलिस स्थापना द्वारा जांच हेतु विनिर्दिष्ट करती है, नामतः-

(क) के तहत दंडनीय अपराध

1) कंपनी (संशोधन) अधिनियम, 2017 (2018 का अधिनियम सं.1)

2) कंपनी (संशोधन) अधिनियम, 2019 (2019 का अधिनियम सं. 22)

(ख) उपर्युक्त अपराध एवं उसी संव्यवहार में किए गए अथवा उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों में किए गए प्रयास, दुष्प्रेरणाएं और षडयंत्र।

[फा. सं. 228/24/2019-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1738.—**In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences to be investigated by members of the Delhi Special Police Establishment namely:-

(a) Offences punishable under : -

1. The Companies (Amendment) Act , 2017 (Act No.1 of 2018).

2. The Companies (Amendment) Act , 2019 (Act No.22 of 2019).

(b) Attempts, abetments, and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/24/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 23 सितम्बर, 2019

**का.आ. 1739.—**केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतदद्वारा कर्नाटक राज्य सरकार, गृह विभाग, की आदेश संख्या एचडी 48 पीसीबी 2016, बेंगलुरू दिनांक 06/09/2019, के माध्यम से प्राप्त सहमति से धारवाड़ सब अरबन पुलिस थाना, धारवाड़, कर्नाटक में भारतीय दंड संहिता की धारा 302 के तहत दर्ज अपराध सं. 135/2016 में आगे के अन्वेषण करने के लिए तथा इससे सम्बद्ध अथवा उपरोक्त अपराधों से संबंधित एक या एक से अधिक अपराधों एवं उससे सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षडंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा. सं. 228/25/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 23rd September, 2019

**S.O. 1739.—**In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka Home Department, Order No.HD 48 PCB 2016, BENGALURU, dated 06.09.2019 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Karnataka for further investigation of Crime No.135/2016 u/s 302 of Indian Penal Code lodged in Dharwad Sub-Urban Police Station, Dharwad, Karnataka and attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence (s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/25/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

## पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1740.**—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन ( भूमि में उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में और पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय, भारत सरकार के का. आ. 2342 दिनांक 29 सितंबर 2017 की अधिसूचना के संशोधन में उक्त अधिनियम के अधीन हरियाणा राज्य के राज्यक्षेत्र के भीतर हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड की मुंद्रा दिल्ली पाइपलाइन, बहादुरगढ़ टिकरीकलान पाइपलाइन, रमनमंडी बहादुरगढ़ पाइपलाइन और रेवारी कानपूर पाइपलाइन परियोजना के लिए सक्षम अधिकारी के कार्यों का निर्वहन करने के लिए श्री बंसी लाल, तहसीलदार, बहादुरगढ़, हरियाणा सरकार को प्राधिकृत करती है। यह अधिसूचना की दिनांक से लागू है।

[फा. सं. आर-11025(15)/5/2019-ओआर-I/ई-30377]

पी. सोमा कुमार, अवर सचिव

## MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 19th September, 2019

**S. O. 1740.—**In pursuance of clause (a) of section 2 of the Petroleum Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) and in modification of Notification of the Government of India in Ministry of Petroleum and Natural Gas S.O. No. 2342 dated the 29th September, 2017, the Central Government hereby authorizes Shri Bansi Lal, Tehsildar, Bahadurgarh, Government of Haryana to perform the functions of Competent Authority for HPCL's Mundra Delhi Pipeline, Bahadurgarh Tikrikalan Pipeline, Ramanmandi Bahadurgarh Pipeline and Rewari Kanpur Pipeline under the said Act, within the territory of Haryana State. The Notification is applicable from the date of this notification.

[F. No. R-11025(15)/5/2019-OR-I/E-30377]

P. SOMA KUMAR, Under Secy.

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## श्रम और रोजगार मंत्रालय

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1741**.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या (98/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–12012/30/2013–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 19th September, 2019

**S.O. 1741.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of HDFC Bank Ltd. and their workmen, received by the Central Government on 19.09.2019.

[No. L-12012/30/2013– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI**
**ID No. 98/2013**

Shri Piyush Kumar Sharma,
RZ-19/B/5, Gali No.4,
Main Sagarpur,
Delhi 110 046. …Workman

**Versus**

(i) The General Manager,
HDFC Bank Ltd,.
HDFC Bank House, 2nd Floor,
Senapati Bapat Marg,
Lower Parel,
Mumbai – 400 013

(ii) The General Manager,
10166-67, Ground Floor,
Gurudware Wali Road,
Karol Bagh,
New Delhi 110 015 ...Management

**AWARD**

This award shall decide a reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) as received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-12012/30/2013-IR(B-I) dated 04.06.2013 for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of M/s HDFC Bank Ltd. in termination of the services of Shri Piyush Kumar Sharma is legal & justified? If not, what relief the workman is entitled to?'

2. Claim statement was filed by the claimant/workman Shri Piyush Kumar Sharma, with the averments that he was appointed by HDFC Bank Ltd., the management, after conduct of interview and was put on trial with effect from 02.01.2011. His performance was found excellent and hence was appointed as 'Clerk' where the workman was performing duties of opening new accounts on temporary basis at Adarsh Nagar branch of the management. Taking into account his excellent performance, the workman was regularized on 02.05.2011 at a monthly salary of Rs.10000.00. However, no appointment letter was issued despite repeated requests. The workman worked to the entire satisfaction of his superiors. During his entire service period, the workman applied for leave from 02.11.2011 to 12.11.2011 for visiting his hometown but the same was not sanctioned. The salary for May, June and July 2011 was paid in the month of August 2011 but he was short paid by 11 days. He was later on transferred to Karol Bagh branch of the management to manage the new account opening branch. The workman approached the Bombay office of the management for issuance of an appointment letter, which annoyed the management at Delhi office and they resorted to harass the workman by not allowing him sign in the attendance register. Thereafter from the month of October 2011 to January 2012, i.e. till his illegal termination, the management manipulated/marked his absence in the attendance register. The workman was allowed to sign in the register only for a few days. The claimant has further pleaded that he has not been paid wages for the period October 2011 to January, 2012, bonus etc. The workman approached the Conciliation Officer in January 2012 for redresssal of his grievance. However, the management preferred to illegally terminate the services of the workman vide letter dated 05.01.2012 without issuance of show cause notice/charge sheet or holding an enquiry. The management also failed to give one months' notice or pay in lieu thereof in complete violation of section 25-F of the Act. Finally, it has been prayed that the claimant may be reinstated in service with full back wages and all consequential benefits.

3. Written statement was filed on behalf of management No.1 taking various preliminary objections, i.e. the claim has been filed with malafide intention with a view to put undue pressure on the management to succumb to his illegal demand, the claim not being not being an industrial dispute as defined under Section 2 of the Act as he is governed by personal contract and also the fact that the present dispute is related to two individual parties. The workman also does not fall within the definition of 'workman' as defined under the Act. Further as per the Fixed Term Contract dated 02.05.2011, management reserves its right to terminate the services of the workman without giving any compensation or

notice. However, workman was given numerous opportunities to improve his performance, which he failed. The workman proceeded on leave without prior intimation to his senior officers/ getting the same sanctioned from his supervisors. There were various disciplinary issues against the claimant, i.e. he was never punctual, Daily sales report was not completed on time, never reported to his immediate superiors though he was present in the office, he failed to achieve the targets assigned to him, never assigned or his duties or gave charge to any other manager before proceeding on leave etc. Under the Fixed Term Contract, the management had powers to terminate services of the workman on grounds of failure to achieve the prescribed targets set by the management or if there is breach of contract by giving one months notice. On merits, management and refuted the other averments contained in the statement of claim. Finally, it has been prayed that the claim may be dismissed as it is devoid of merits.

4. Based on the pleadings of the parties, this Tribunal vide order dated 11.01.2017, framed the following issues and the case was then listed for evidence of the claimant union:

(i) Whether the claimant is a workman with the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(ii) In terms of reference.

5. Claimant, in order to prove his case examined himself as WW1, whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/8. On the other hand, the Management, in order to rebut the case of the claimant examined Shri Anurag Dixit, Assistant Vice President as MW1, whose affidavit is Ex.MW1/A and he relied on documents Ex.MW1/1 to Ex.MW1/9. No other witness was examined by either of the parties.

6. Shri Jitesh Pandey, authorized representative, advanced arguments on behalf of the claimant. Ms.Romila Joshi, authorized representative advanced arguments on behalf of the management. I have gone through the records and my findings on above issues are as follows.

**Issue No.1**

7. So far as the question as to whether workman herein falls within the definition of "workman" as provided under section 2(s) of the Act is concerned, no specific arguments were advanced on behalf of the management. There is no evidence on record to show that the workman was performing duties of supervisory or managerial in nature. It is well settled that in order to find out as to whether a person was performing the work of supervisory or managerial in nature, the dominant purpose of the employment of the person concerned should be taken into consideration and certain additional duties performed by him should be ignored while determining the status and character of the person. Since the objection regarding the status of the workman being employed in supervisory capacity has been taken by the management, as such the onus to prove this fact is upon the management. It was imperative for the management to adduce cogent evidence to prove the specific nature of duty regarding supervisory or managerial work of the workman. In order to find out whether the workman herein falls within the definition of workman as defined in section 2(s) of the Act. It would be expedient to have a glance on definition of the term 'workman', contained in section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) Who is employed in the police service or as an officer or other employee of a prison , or

(iii) Who is, employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

8. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This

part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

10. For an employee in an industry to be a "workman" under this definition, it is manifest hat he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

11. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

12. In view of the legal position discussed above, it cannot be held that the workman herein does not fall within the ambit and scope of the definition of 'workman' as defined under Section 2(s) of the Act. Hence the issue is decided accordingly against the Management.

**Issue No. 2 :-**

13. From the pleadings of the parties, it is manifest that the workman/claimant joined the services as a clerk with the Management on 02.01.2011 and his services were regularized as contract sales executive on 02.05.2011 vide order (Fixed Term contract) Ex.MW1/3. The said contract/agreement though does not bear the signatures of the workman was effective for two years. It was specifically provided in the said contract Ex.MW1/3 under clause 12 that **the contract may be terminated by either party giving to the other not less than one month's and not more than thirty day's prior written notice to that effect expiring at any time after the commencement of workman's service or by the Bank paying him one month's basic salary in lieu of notice.** Testimony of the claimant/workman that he was not served with any kind of notice as required under Section 25-F of the Act before termination of his services on 28/12/2011, has gone unchallenged. It is the case of the Management that they terminated the services of the claimant as his performance was poor and memo Ex.MW1/7 was also issued to him. However, there is nothing on record to suggest that any prior written notice was served by the Management upon the claimant or in lieu thereof one month's salary was paid to the claimant/workman by the Management, in terms of the contract Ex.MW1/3. It is also evident from termination letter Ex.MW1/9 that in fact no written prior notice of 30 days was served upon the workman, inasmuch it has been stated in the termination letter that services of the workman Piyush Kumar Sharma were terminated with effect from close of office hours on 28/12/2011. Though by way of the said letter it was communicated to the claimant/workman that he will be paid 30 days' salary in lieu of notice as per clause 12 of the contract letter dated 2/5/2011, however the Management has not led any evidence to show that in fact 30 days' salary was paid to the workman at the time of termination of his services. It would not be out of place to mention here that Section 25-F of the Act also clearly provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month' s notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of the notice. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

14. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

15. Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f. 29/12/2011 is held to be illegal and void.

16. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from 2/1/2011 to 28/12/2011. His last drawn wages/salary were to the Rs.10,000/- per month. Services of the claimant were illegally terminated w.e.f. 29/12/2011. Though the workman/claimant has prayed for reinstatement into service with full back wages, however he has neither pleaded nor has adduced any evidence to show that he is not gainfully employed since after his termination. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has observed as under :

"The propositions which can be culled out from the aforementioned judgments are :

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages.** If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

17. Since the claimant has neither pleaded nor has adduced any evidence to show that he is not gainfully employed since after his termination, to my mind he is not entitled for reinstatement into service. Furthermore, latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee.

The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

18. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.1,00,000/- (Rupees One Lakh only) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum till realization of the amount. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 2.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1742**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 31/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41012/66/2012–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1742.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41012/66/2012– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW**

**PRESENT :** RAKESH KUMAR, PRESIDING OFFICER

**I.D. No. 31/2013**

**Ref. No. L-41012/66/2012-IR(B-I) dated: 11.03.2013**

**BETWEEN :**

Shri Rajendera Kumar S/o Shri Nanhe Lal
Village Harikuver Post. Nighova
District – Lucknow (UP)

**AND**

1. The Divisional Railway Manager
   Northern Railway
   DRM, Hajratganj, Lucknow
2. M/s. Shahid Faizan Ahmed and Brothers
   654, Begum ka Makbara
   Janpad Faizabad.

**AWARD**

1. By order No. L-41012/66/2012-IR(B-I) dated: 11.03.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Shri Rajendera Kumar S/o Shri Nanhe Lal, Village Harikuver Post. Nighova, District – Lucknow (UP) and the Divisional Railway Manager, Northern Railway, DRM, Hajratganj, Lucknow & M/s Shahid Faizan Ahmed and Brothers, 654, Begum ka Makbara, Janpad Faizabad for adjudication.

1. The reference under adjudication is:

> *"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW AND M/S. SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD IN TERMINATING THE SERVICES OF* SHRI RAJENDERA KUMAR S/O SHRI NANHE LAL *W.E.F. 25.04.2009 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"*

2. The case of the workman, in brief, is that he had been appointed through opposite party No. 2 to work for opposite party No. 1 as Driver Box Porter on 25.04.2006. The workman has stated that the work done by him was perennial in nature and he worked continuously upto 25.04.2009 for more than 240 days, continuously for more than 120 days, when his services were terminated without any notice pay or retrenchment compensation, in violation to the provisions of Section 25 F of the Act. He has also submitted that after his termination, new employees have been recruited in his place, in violation to the provisions of section 25 H of the Act; accordingly, the workman has prayed that he may be reinstated with back wages and continuity in service.

3. The opposite party No. 01 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01; moreover the railway management entered into an agreement with the opposite party No. 02 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 2 did not file any written statement in spite of repeated notices.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. After filing of rejoinder, the workman abstained himself from the proceedings w.e.f. 14.06.2016 and neither filed any list of documents in support of its pleadings; nor corroborated the same though oral evidence; accordingly, in rebuttal the management also preferred not to file any evidence; resultantly, the case was fixed for arguments.

7. The authorized representative of the management of OP No. 1 argued his case; whereas none trued up from either the workman or the OP No.2.

8. Heard the authorized representatives of the OP No. 1 only, Sri U.K. Bajpai and perused entire material available on record.

9. In *M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164*, Hon'ble High Court relied upon the law settled by the Apex Court in *Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004*; wherein it was observed by the Apex Court:

> ***"that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."***

10. In the present case the workman failed to prove his case as he neither filed any documentary or oral evidence in support of his pleadings; nor did he turn up for his cross-examination. Mere pleadings are no substitute for proof. It was obligatory on the part of workman union to come forward with the case that his services have illegally been terminated by the opposite parties in utter violation of the statutory provisions. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of opposite parties in terminating his services was either illegal or unjustified.

11. Accordingly, the reference under adjudication is adjudicated against the workman; and as such, I come to the conclusion that the workman is not entitled to any of the relief(s) claimed.

12. Award as above.

LUCKNOW

9th August, 2019.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1743**.—औद्योगिक विवाद अधिनियम, [1947 1947 का 14] की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य बिहार ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पटना के पंचाट [संदर्भ संख्या आई.डी. मामला संख्या 02 ( C ) of 2015] को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–12025/01/2019–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1743.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [ID Case No. 02 ( C ) of 2015] of the Indus.Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Madhya Bihar Gramin Bank and their workmen, received by the Central Government on 19.09.2019.

[No. L-12025/01/2019– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA**

**I.D. Case No. 02 (C) of 2015**

Between the management of Chairman, Madhya Bihar Gramin Bank, H.O- Meena Plaza, South Museum Road, Patna-800001 And Their workman Sri Gopal Kant Singh, S/O- Late Lakhan Singh, Vill.- Parbaldih, P.O- Kariadpur, P.S- Fatehpur, Dist.- Gaya-824232.

For the management : Sri Rabi Kant Prasad Srivastava, Senior Manager.

Sri Santosh Sharan Thakur, Asst. Manager.

For the workman : Sri B. Prasad, President, President Bihar Provincial Gramin Bank Employees Association.

**Present** : Vishweshwar Nath Mishra, Presiding Officer,
Industrial Tribunal, Patna.

**AWARD**

**Patna, dt. 16th August, 2019**

1. The present case has been filed u/s 2A ( 1 & 2 ) of the Industrial Dispute ( Amendment ) Act, 2010 by the aforesaid workman who seeks relief of setting aside the order dated-29.09.2014 passed by the Ld Disciplinary Authority & confirmed by the Ld. Appellate Authority vide order dated-22.11.2014, reinstatement in the services of the Bank with all consequential benefits and payment of cost of Rs. 20000/- for contesting the dispute.

2. Matter was raised by the workman before the Assistant Labour Commissioner ( Central ), Ministry of Labour, Maurya Lok Complex, 2nd Floor, Block 'A' Dak Bunglow Road, Patna-1 vide application dated- 17.12.2014 which was received by the office on 18.12.2014 ( for short A.L.C ( C ), who a issued notice vide File No.- 1/02/2015 dated- 6 / 7th January, 2015 to the concerned parties.

3. The Assistant Labour Commissioner ( C ) Patna held conciliation proceedings and tried his level best to settle the dispute but due to the non-conciliatory attitude of the management, the conciliation proceedings ended in failure.

4. After filing the dispsute, a period of 45 days elapsed and accordingly, as per the provisions of Section 2A (1 & 2) of the Industrial Dispute ( Amendment ) Act, 2010, an application was filed before this Tribunal.

5. Both parties appeared before this tribunal and management filed written statement.

6. In the instant case a petition has been filed on behalf of the management on 06.03.2018 stating therein that in view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same should be rejected.

7. A petition has also been filed on behalf of the workman on 19.06.2019 praying theirin to withdraw the instant I.D.Case in view of the judgement of the Hon'ble Patna High Court and the workman himself want to withdraw the I.D.Case.

8. Heard both the parties.

9. Accordingly, In view of the petition dt-19.06.2019 filed by the workman, the instant I.D.Case is hereby dispossed of as withdrawan and also being not maintainable in view of the aforesaid judgement of the Hon'ble Patna High Court. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

16.08.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ.1744**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस ई रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 धनबाद के पंचाट (संदर्भ संख्या 119/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41012/260/1999–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1744.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of S.E. Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41012/260/1999– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

**In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act. 1947**

**Reference: No. 119/2000**

Employer in relation to the management of S.E. Railway, Purulia

**AND**

**Their workman**

**Present:** Shri Dinesh Kumar Singh, Presiding Officer

**Appearances:**

For the Employers : Sri Sanjay Kumar, Adv.

For the workman. : None

State : Jharkhand. Industry:- Railway

Dated 29/07 /2019

**AWARD**

By Order No.L-41012/260/1999 -IR (B-I) dated 22/02/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

**"Whether the action of the Management of D.R.M., S.E. Railway, Adra in dismissing the services of Sri Bhushan from 26.03.97 is proper and justified? If not, to what relief the concerned workman is entitled to?"**

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently workman left appearing before this Tribunal. Thereafter again notices were issued to the parties and one of the notices returned undelivered The Case is pending since long and workman is not appearing before the Tribunal. It appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1745**.—औद्योगिक विवाद अधिनियम, 1947 (947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 90/2013–14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41011/04/2014–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1745.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2013-14 ) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41011/04/2014– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No.CGIT/NGP/90/2013-14**

Date: 29.08.2019

**Party No.1**: The Divisional Commercial Manager,
South East Central Railway,
Kingsway,
Nagpur.

**V/s**

**Party No.2**: Shri Rajesh Supatkar,
General Secretary,
Parcel Porters Sanghathan,
New Mankapur, Plot No. 37,
Near Mhada Colony,
Nagpur (M.S) – 440030.

**AWARD**

(Dated: 29th August, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South East Central Railway and their Union, Parcel Porters Sanghathan for adjudication, as per letter **No.L-41011/04/2014-IR (B-I) dated 25.02.2014,** with the following schedule:-

**"Whether the action of the Senior Division Commercial Superintendent South East Central Railway, Nagpur in seizure the badge of Shri Sunil Brijlal Ganveer, Porter of Gondia Railway Station and debar for the post of Gangman as per policy of Railway Board letter dated 01.04.2008 is just fair & legal? To what relief is entitled to the concerned workman".**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Parcel Porters Sanghathan("The Union" in short) filed the Statement of Claim and the Management of South East Central Railway("Party No.1" in short) filed its Written Statement.

3. The worker, through the Union filed Statement of Claim by asserting that, the workman raised his dispute through A.L.C. Nagpur and asserted that, he was work as a Licensed Porter as per Railway rules and regulations on 26.02.2008 and Railway issued a License through Badge No.3 on 26.02.2008, but "Badge transfer was taken place wrongly." It should be simply adjudged the Licensed Porter and copied the fake remark of Commercial Department.

4. According to the workman, he regularly paid the license fee for renew his license and Railway issued a Valid Identity Card to him. Railway also issued Railway Recruitment Rules in which minimum educational qualification is VIII Std. According to him, appointment will be subjected to surrendering the license and Badge and right to be a License Porter, but Screening Committee without extending his employment, taken back his valid License and Badge illegally. Railway did not return his License or Badge.

5. According to the workman, he was appearing before Screening Committee of Commercial Department to ensure the eligibility of his Candidature. He was earning his bread through Porterage at Gondia Railway Station. He was not directed for medical examination, so he prayed that, Railway disallowed his Claim illegally and he also prayed that, he should be paid compensation of wages for such 'Lay-off' and unfair labour means of the Selection Authority.

6. On behalf of the management, it was admitted that, workman raised his dispute before A.L.C. against seizure of Badge and Railway Board issue circular carrying No.RBE50/2008 and admitted that, Railway issue circular for License Porter for the appointment for the post of Gangman and transfer of Badge/License to their legal representative, but it was denied that, he was possess the valid License, Badge in terms of extent rules as on 26.02.2008 and rest of material fact is denied by the party no.1. According to them, License Porter will be bound by the terms and condition by the agreement.

7. According to the Party No. 1, there is no relationship as workman and employer. They also denied that, Union is at all legally authorized to represent cases of the workman. It is also denied that, there is any labour exploitation and any violation of establishment rule. According to them workman was a Licensed Porter not Parcel Porter. It is also denied that, applicant possessing valid License and Metal Badge. Workman had never approached to the Railway Administration with the request to transfer the said Badge/License in his favour by following the required procedure as prescribed under the rules.

8. According to the Party No.1, at the time of screening for appointment of licensed porters as Gangman, workman having License/Badge No.3 without any authority and Screening Committee was rightly constituted to adjudge eligibility of the candidate for appointment as Gangman in Group 'D' cadre. According to Party No.1, Screening Committee observed that, workman was not possessing valid License and not fulfilled the requisite criteria in terms of Railway Boards Circular and prayed that, workman was not entitled any relief and his statement of claim is devoid of any merit and the same is liable to be dismissed with exemplary cost.

9. Workman filed rejoinder as same footing of statement of claim. His application for the Gangman was enrolled in the list of Commercial Department as eligible candidate as per Railway Rules. According to them, issue of License and surrender of License both are different. The policy of the Railway for adjudge to Gangman as one time exemption and relaxation in Recruitment Rules, so he prayed that, he adjudged as a Gangman at par with others in the same panel with respective effect.

**Point of determination:-**

1. "Whether Railway illegally debar the workman of a post of Gangman?"
2. "Whether workman entitled any relief?"

**Reason for decision:-**

10. On behalf of the workman, he examined himself to support his statement of claim and on behalf of the Party No. 1, they examine Smt. K. Mangamma Rao, who were working as Chief Office Superintendent in S.E.C. Railway Nagpur. Now, I want to see argument with respect to their evidence.

11. On behalf of the workman, it was argued that, he possess valid license of porter and license is obtained by him from his father Brijlal, but the Party No.1 i.e. Divisional Railway Manager Commercial, S.E.C wrongly interpreted the circular issued by the Railway Board, these facts are supported by the workman's court statement i.e. affidavit on evidence (P.W.1) and in para no. 18, 21, 24 of his cross-examination he admitted that, "My father's name is Brijlal. He died at the age of 50 before 15 years ago. He was $10^{th}$ class fail. Badge No.3 in the name of Brijal and Screening Committee took his Badge. He also proved that, two documents i.e. P1 and P2 in which P1 is Identity Card and P2 is a receipt and he remain unrebutted in his cross-examination. Now, I want to see the Management's evidence.

12. Smt. K.Mangamma Rao (M.W.1) supported her defence in her chief examination, but in para 23, 24 and 28 of her cross-examination she admitted that, "Railway issued license of porter in favour of Late Brijlal Ganvir. She also admitted that, facts mentioned in circular dated 09.12.1988, exhibit M-1 and exhibit P-3 of dated 01.04.2008 are correct, but she has no knowledge, "Who was Parcel Chief Supervisor in 2005 at Gondia,------ and she has no knowledge, whether Screening Committee did not issue any letter asking explanation before denial of his claim as a Gangman?" She also has no knowledge whether, Screening Committee follow the principle of natural justice or not, but according to her the genuineness of license is verified by Sr. D.C.M, Nagpur. In this way, she remain unrebutted in her statement on the major point, but on perusal of her, it appears that, she gave her statement on the basis of document, but no enmity or favourism appear in her statement, so her statement appears to be true.

13. Ongoing above discussion it appears that, Brijlal was father of Sunil and he got Badge No.3 from his father. It also appears that, he (Brijlal) also filed affidavit on 28.10.2004 before Executive Magistrate by study or perusal of the circular dated 09.12.1988 & 09.06.2004, workman entitled to transfer Badge No.3 from the licensed porter i.e. his father Brijlal.

14. It also appears that, by the Railway Board's one time scheme dated 01.04.2008, he is also entitled to consider his name as to the post of Gangman, because this circular requires (1) Medical Certificate, (2) Affidavit of father & (3) Valid license of porter, but management failed to prove that, workman breached particular condition & managements witness MW-1 (Smt. K. Mangamma Rao) didn't prove this fact by a positive evidence. In my opinion, burden of proof is on workman, but onus of probandi lies on management, because member of Screening Committee and Sr. D.C.M. were their own employee, but they did not examine any member of Screening Committee or Sr. D.C.M. or the Parcel Chief Supervisor at Gondia or Station Master or any other witnesses, who know these facts, so adverse inference may be drawn against the management.

15. Management also took an objection regarding authority of the union to file this claim. Managements witness Smt. K. Mangamma Rao, in para no. 1 of her chief-examination asserted that, the union is not registered union and no legal rights to contest this claim, so according to her, this claim is not tenable, but in para 23 of her cross-examination, she admitted that, she had no knowledge, "How many unions are working in Central Railway, Nagpur." On the contrary workman (P.W.1) asserted firmly in para 11 & 12 of his chief examination i.e. affidavit on evidence, but he was not cross-examined in this point by the management (Party no.1), so adverse inference is drawn against the management. Workman also filed Xerox copy of the Registration Certificate of the Union and membership form of the union. It appears to be genuine, because no rebuttal evidence filed by the management.

16. On behalf of the workman, they relied on following case laws:-

(1) The Senior Divisional Commercial vs. The General Secretary, Hon'ble Bombay High Court, Writ Petition No. 4472/2008 date of judgment 14 October 2009.

(2) Smt. Aasha vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench, Writ Petition No. 1340 of 2011, date of order 23.06.2011, (D.B)

(3) Smt. Maya vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench W.P.No. 1333/2011, date of order 20 June 2011, (D.B).

(4) Whether Reporters of Local Papers Rajusingh Joraji vs. Senior Division Commercial Manager, Hon'ble Gujrat High Court Bench Ahmadabad, C/SCA/19944/2015, date of judgment 28 September 2017.

Hon'ble High Court laid down on following principles:-

(a) "There is no dispute that the Railways carry on its business of transportation and earns huge profit from the said business, so also from transportation of passengers. It is the case of the petitioner Railways itself that they provided license to the licensed porters, recovered security deposits as well as license fee

regularly, has power to cancel the license in case of misconduct or as the case may be. It has power to regulate and control the activities of licensed porters on platforms. It has power to fix the remuneration which the licensed porters can receive from the passengers. Not only that, even according to the petitioner, the licensed porter as per the exigencies are engaged to perform the work of parcel porters and that was done initially for 4 hours and thereafter 8 hours and his entire work is done upon the direction of the Railways and its officers and there is a full control over the same."

(b) "The manual work is performed by the licensed porters as well as parcel porters and this is the systematic activity of cooperation between the employer and the workmen. As a matter of fact, the petitioner Railways did not lead any evidence before the tribunal to show as to how the activities undertaken by the petitioner Railways and the work required to be performed as aforesaid by the licensed porter and the parcel porters would not fall in the definition of 'Industry' and ' workman' under the Industrial Disputes Act. In the absence of any rebuttal evidence and appropriate pleading to refute the claim of the members of the respondent Union that they are workmen, I hold that the members of the respondent Union are workmen and entitled to maintain the reference before the tribunal."

(c) "Since the petitioner Railways did not fairly produce the entire material before the Tribunal, it will be appropriate to compensate the respondent Union by asking the petitioner Railways to pay costs."

(d) "The issue whether members of Respondent Union are workmen or not is decided against the petitioner by me and shall not be tried by the tribunal again."

(e) "Before allowing such transfer of license, it should be ascertained that the porter has the sole earning member of the family. An affidavit produced by the licensed porter under the seal of a Magistrate may be taken as adequate proof of the dependence of the family on licensed porter and the nature of relationship of the nominee."

(f) "The application of any law or any rule has to be designed to doing real and substantial justice. More particularly, in interpreting and applying benevolent schemes and welfare oriented policy resolutions, the purposive approach is advocated. The function of purposive application of any rule or law HC-NIC page 6 of 10 Created on Sat Oct. 07 05:05:27 IST 2017 is to iron out technicalities in granting benefit of the provision or policy. The entitlement of the petitioner was not in dispute."

(g) "There is no gainsaying that when the question is of application of any welfare scheme, the purposive construction should deservedly must be further informed by liberal approach in interpretation and application of the provisions. ----------The aim of the policy is to provide relief to the family of the porter who has become infirm or who has died, by permitting transfer of his Badge or Buckle in favour of near relatives."

(h) "Senior Division Commercial Manager, Western Railway, Ahmadabad, and the reasons supplied therein are hereby set aside. It is held and declared that the petitioner is entitled to the benefit of the policy and is further entitled to be transferred the Buckle No. 163 of his grandfather Kacharaji Chaturji Thakor. The respondents are directed to transfer the said Buckle No. 163 in the name of the petitioner as he is held to be covered under the policy. The respondents are directed to give benefit to the petitioner of the policy by transferring Buckle No. 163 in his name."

17. The union relied case laws: U.O.I. Vs. Ram Chandra Tanti WPCT Nos. 124 to 126/200 order dated 29.03.2004, National Federation of Railway Porters Vs. Union of India 1995 II LLJ 712 and A.I. Railway parcel and Goods Porters Union vs. Union of India W.P.(Civil) No. 433/1998 date of order 22.08.2003, in which, Hon'ble Lordship hold that, "One big point of difference between the two sets of porters is the fact that while one set is being paid for their services by the passengers directly, the other set is being paid for their labour by the authorities of the railway.

18. Judging the present case in hand and considering the principles laid down in above case laws, my humble opinion is that, the Screening Committee failed to consider valid claim of the petitioner, because petitioner has proved all necessary pre-condition for the post of Gangman as per the scheme issued by the Railway and Screening Committee also failed to interpreted the wellfare scheme, which was issued by the Railway Board in the interest of Licensed Porter. Railway took defence that, petitioner was not possessing valid license on 26.02.2008. Ongoing above discussion, I also observed that, Railway failed to prove this defence by not producing legal evidence, so I also observed that, adverse inference may be drawn against the management (Party No.1). I also observed that, Railway did not pass any legal order which shows that, petitioner had not valid license on 26.02.2008. In my opinion, principles of natural justice were not observed by the Railway Screening Committee or Sr. D.C.M, but I also do not agree with the petitioner that, Railway committed any unfair labour means. It also appears that, appointment of petitioner as a Gangman was delayed near about 10 years, so in my opinion, he is entitled to Lumpsum compensation of Rs. 50,000/- (Rupees fifty thousand only) in addition to appointment for the post of Gangman. Hence it is ordered.

**ORDER**

**The action of the Senior Division Commercial Superintendent South East Central Railway, Nagpur in seizure the badge of Shri Sunil Brijlal Ganveer, Porter of Gondia Railway Station and debar for the post of Gangman as per policy of Railway Board letter dated 01.04.2008 is not just, fair & legal. He is entitled for the post of Gangman from the date of publication of this award in official gazette and he is also entitled to Lumpsum compensation of Rs. 50,000/- (Rupees fifty thousand only) in lieu of delay in appointment and suffering, which is payable within one month from the publication of this award in official gazette, failing to which, amount due to workman will carry interest of 6% per annum from the date of due to the workman to the date of actual payment of the amount to the workman. He is not entitled for any further relief.**

S. S. GARG, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1746**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 70/2013–14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41011/104/2013–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1746.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2013-14 ) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41011/104/2013– IR(B-1)]

B.S. BISHT, Under Secy.

**ANNUXURE**

**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No.CGIT/NGP/70/2013-14** Date: 24.06.2019

**Party No.1** : The Senior Divisional Commercial Manager,
South East Central Railway,
Nagpur Division, Kingsway, Station Road,
Nagpur – 440001

**Versus**

**Party No.2** : The Rajesh Supatkar, General Secretary,
Parcel Porters Sanghathan,
New Mankapur, Plot No. 37,
Nagpur (M.S.) – 440030.

**AWARD**

(Dated: 24th June 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their union, Parcel Porters Sanghathan for adjudication, as per letter **No.L-41011/104/2013-(IR (B-I) dated 23.12.2013,** with the following schedule:-

**"Whether the action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for absorption & regularization of the services of Shri Ganesh Borkar as Parcel Porters, is just, fair & legal? To what relief the workman is entitled?''**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Parcel Portal Sanghtana ("the union" in short) filed the statement of claim and the management of South East Central Railway, ("Party No. 1" in short) filed its written statement.

3. On behalf of the union statement of claim was filed by asserting that the workman Shri Ganesh Borkar was recruited as a Parcel Hamal/Parcel Porter/Licenced Porter in the office of Party no.1. Selection process was completed by a committee followed by interview and other recruitment procedure at that time i.e. in the year of 1994 prevails. Recruitment notification was issued by Railway i.e. management party no.1 on 08.08.1994. At that time near about 300 Parcel Porters working in different Railway Stations under Nagpur Division of SEC Railway. According to the union the workman completed 240 days of continuous service in a one calendar year as a regular Parcel Porter from the date of appointment. He worked for transportation of goods and parcel as loading and unloading of parcel from station to train and vice-versa.

4. According to the union work of handling parcels in a station is a work of permanent and perennial in nature. There were 151 parcel porters working at different railway stations in Nagpur division. The wages were paid directly by railway administration. They treat them as regular railway employees. Payments of parcel porter were made through station manager/Chief Parcel Supervisor at their working place. They were initially paid minimum wages prescribed by Central Government with the scale of Rs. 750-940 (RPS)-Rs. 2540-3200(VPS). Management assured them to regularize as permanent staff. In the year of 1997-98 administration draw an action plan to ensure that absorption of all casual labour on roll is completed by December 1997.

5. According to the union the workman has completed more than 120 days of continuous service till he was forcibly stop from work that is from January, 2005 against the circular issued by the management. So they pray that he must be reinstated by regularizing his service as a parcel porter and pray for consequential relief.

6. Management filed written statement by denying all material facts. They also denied workman was a member of registered trade union. So they pray that the present statement of claim is void ab-initio. They also denied that workman was recruited as a Parcel Porter and he appear before a committee for regularisation. According to the management the workman had made an application to work as a Licensed Porter and he executed the agreement the terms and condition of working as Licensed Porter at Tumsar Road Railway Station. According to the management notification dated 08.08.1994 was not for recruitment for the post of Parcel Porter but it is for the licensed porter on payment of licensed fee.

7. Management denied para no. 3 and 9 of the statement of claim by asserting that workman had been completed more than 240/120 days of his continuous service in one calendar year. It was also denied that management paid his wages as regular basis. So they cannot seek any redressal as prevailing law. So they pray that present statement of claim and reference is bad in law and is deserved to be dismissed. According to them workman is only authorized to work as licensed porter on payment of license fee. It is also denied that workman was cover under Industrial Dispute Act. According to them workman was authorized to receive handling charges of passenger luggage as per railway rules.

8. Management also denied that muster and payment sheet is maintained by the station master. According to them there is no relationship between them as a Master and servant. Management denied that 151 Parcel Porters were working in Nagpur Division in the year of 1994. It is also denied that the workman was working in different period at different Railway Stations and he acquires a status of regular staff. According to them there is no occasion to absorb the workman in the employment of Railway. According to the management 325 candidates appear for screening out of 460 candidates. Out of those 186 candidates were selected and 38 candidates were already working at different stations.

9. According to the management Divisional Commercial Manager, S.E. Railway Nagpur had issued instructions to all Station Masters on 28.07.1995, in compliance of these instruction workman had executed an agreement of terms and conditions of working as Licensed Porter. According to the management workman was not doing the work of handling the parcel and luggage booked by the parties with Railway Administration. According to them the union also approached this Tribunal through reference no. 203/98 and 287/99, in these reference Tribunal passed award which was challenged in WP NO. 4472/2008 Before the Hon'ble High Court which was remanded back on 14.10.2009. This judgment was also challenged in LPA No. 304/2010 which is pending before the Hon'ble High Court. They also denied that there is any relationship between and employee and Railway Administration as Employee and employer. According to them workman cannot claim regularisation of his service with consequential relief, so they pray that the statement of claim filed by the Union is liable to be dismiss with exemplary cost and workman not entitled to any relief.

10. **Point of determination**

i. Whether the action of the management in denying the demand of regularization of the services of the workman is just, fair and legal?

ii. Whether the workman is entitled to any other relief.

**Reasons for decision**.

11. On behalf of the union, workman, Ganesh Borkar and on behalf of the management, Smt. Mangamma Rao was examined on the basis of evidence on affidavit. They were cross-examined by opposite counsel. Both the above witnesses support their statement of claim and W.S. respectively in their chief examination. On behalf of the union, it was argued that, in 1994, workman was appointed as a Parcel Hamal/Parcel Porter by the Railway Authority after scrutiny and interview, which was conducted by Selection Committee. He also argued that, workman completed more than 240 days of continuous service. So he acquired the status of regular employee. This argument was denied by the management. Now I want to see the evidence of the workman.

12. Ganesh Borkar in para 14 and 15 of his cross-examination admitted that, he passed class - IX examination and he did not know about the notification dated 08.08.1984, which he has mentioned in para no. 1 from A to A portion. He also admitted that, he did not file appointment letter or receipt of license of porter or any document regarding his qualification or regarding his service as a parcel porter. He also admitted that, he did not file any document relating to his attendance and wages in relation to parcel porter/parcel hamal. He also has no specific knowledge regarding his pay scale or name of Station Master or casual labour register, but he admitted that, he knows about the muster roll. In this way, he rebutted his chief examination regarding his knowledge of parcel porter/parcel hamal. It also appears that, he is illiterate.

13. Ganesh Borkar, PW-1 in para 16 & 20 admitted that, before this reference, he also filed his claim before the Labour Commissioner, but he denied that, previous reference i.e. in Rajesh Supatkar case, he was party. He also denied that, he was engaged by the Railway as a Parcel Porter for handling parcel and unloading parcel into railway wagon and railway shade. He also denied the railway defence i.e. "It is not true to say that, railway appointed me as coolie worked for passenger, the income was insufficient, therefore in order to supplement the income, the handling of parcel and luggage, railway gave me some additional work for handling parcel…….It is not true to say that, due to change in the policy through outsource……Railway Administration decided for closure of parcel handling by the licensed porter". In this way, he rebutted main fact, which is asserted in statement of claim and in affidavit examination in chief. In my opinion, his evidence is not reliable.

14. Ganesh Borkar, PW-1 in para no. 19, 20 and 22 of his cross-examination, admitted that, he paid license fees for license porter, but he denied that, he filed any reference regarding parcel porter with Rajesh Supatkar. He also denied that, his case was dismissed by the CGIT and Hon'ble High Court due to non-appearance. He also admitted that, he did not read, what is mentioned in document D-1, because he does not know English. In this way, he rebutted main fact, which is asserted in statement of claim and in affidavit examination in chief.

15. Management's witness, MW-1 supported his defence, which is taken in W.S. and after reading his statement; it appears that, his statement is based on documents, because he was posted in this office in the year of 2008-09. According to her, she filed Xerox copy of agreement, but original is not available on office record. She also reiterated that she was given her statement on the basis of record. She also admitted that, said agreement was not executed before her. She also admitted that, workman was paid minimum wages, when he worked as Parcel Porter. In this way, she remained unrebutted in her court statement. Nothing came in her statement, which shows, she is prejudice with the workman or someway with the management. In this way, her statement appears to be reliable. Moreover, workman admitted documents M-1 to M-5, which support the management's version.

16. On behalf of the union, they relied case laws, MSRTC Vs Castribe Rajya Parivahan Karmachari Union 2009 (8) SCC 556, New India Assurance Co. Vs. A. Shankaralingam 2009 (1) SCC (L&S) 55 and Union of India Vs. Subir Mukherjee 1998 (5) SCC 301, in which following principles are laid down:-

i. Part time employee is covered by definition of workman U/s 2(s) of the I.D. Act, 1947.

ii. If the work of casual labour is of perennial nature, then the workers are very much entitled to the benefits and privileges of regularization.

iii. Continuing or employing badlies, casuals or temporaries for years together, with object of depriving them of status and privileges of permanent employees is an unfair labour practice on the part of employer.

17. On behalf of the management, it was argued in para 7 of their written argument that, "Applicant never worked as a Casual Labour with the Railway Administration. Therefore, there is no occasion to absorb the applicant in the employment of the Railways" and also argued that, union already filed such dispute, which came as a reference before

this Tribunal. On this basis, they argued that, workmen's claim shall be rejected, because workmen did not challenge the award dated 15.07.2010 before any other court, so the workman is not entitled to any relief. The union did not deny this argument as in fact and figure. This office also provided Xerox copy of the reference of the case No. CGIT/NGP/36/2002.

18. On perusal of the record, it appears that, my predecessor in Case No. CGIT/NGP/36/2002, General Secretary, Parcel Porter Sanghatan Vs. Divisional Commercial Manager, SE Railway, Nagpur Award dated 28.03.2008 and 15.07.2010 and Hon'ble High Court's order in W.P. No. 4472/2008 held that, the members of the Respondent union are workmen and entitled to maintain the reference. My predecessor also held that, employees of Parcel Porter Sanghatana, which name mentioned in Annexure B & D are entitled for temporary status and regular pay scale, but claim of petitioners, which name mentioned in Annexure C was dismissed. Against this order, LPA No. 304/2010 is pending before the Hon'ble High Court. It also shows that, the name of the present workman, **Shri Ganesh Borkar is mentioned in Annexure C at Item No. 158 of the above reference.** In this way, in the eye of law, nobody is allowed to raise same issue before this Tribunal i.e. principle of res-judicata is applied in reference, so management's argument is sustainable.

19. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, Railway has two sets of porters, but union failed to prove that, the workman was appointed by the management as a Parcel Hamal/Parcel Porter and he was working continuously for 240 days in one calendar year. On perusal of the record, it also appears that, he was simply licensed porter i.e. collie for some sort of period, but his claim was decided by this Tribunal as well as by the Hon'ble High Court and LPA is pending before the Hon'ble Court. So, workman is not entitled to raise same issue through second reference. In my opinion, the workman is not entitled to any relief i.e. matter is subjudice before the Hon'ble High Court in form of LPA. Hence, it is ordered:

**ORDER**

**The action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for regularizing the services of Shri Ganesh Borkar as Parcel Porters, is just, fair & legal. The workman is not entitled to any relief.**

S. S. GARG, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1747**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 71/2013—14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 प्राप्त हुआ था।

[सं. एल—41011/103/2013—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1747.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2013-14 ) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41011/103/2013– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No.CGIT/NGP/71/2013-14** Date: 04.06.2019

**Party No.1 :** The Senior Divisional Commercial Manager,
South East Central Railway,
Nagpur Division, Kingsway, Station Road,
Nagpur – 440001

**Versus**

**Party No.2** : The Rajesh Supatkar, General Secretary,
Parcel Porters Sanghathan,
New Mankapur, Plot No. 37,
Nagpur – 440030.

**AWARD**

(Dated: 04th June 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their union, Parcel Porters Sanghathan for adjudication, as per letter **No.L-41011/103/2013-(IR (B-I) dated 23.12.2013,** with the following schedule:-

**"Whether the action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for regularizing the services of Shri Prakash Eaknath Gawande as Parcel Porters, is just, fair & legal? To what relief the workman is entitled?''**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Parcel Portal Sanghtana ("the union" in short) filed the statement of claim and the management of South East Central Railway, ("Party No. 1" in short) filed its written statement.

3. On behalf of the union statement of claim was filed by asserting that the workman Shri Prakash Eknath Gawande was recruited as a Parcel Hamal/Parcel Porter/Licenced Porter in the office of Party no.1. Selection process was completed by a committee followed by interview and other recruitment procedure at that time i.e. in the year of 1994 prevails. Recruitment notification was issued by Railway i.e. management party no.1 on 08.08.1994. At that time near about 300 Parcel Porters working in different Railway Stations under Nagpur Division of SEC Railway. According to the union the workman completed 240 days of continuous service in a one calendar year as a regular Parcel Porter from the date of appointment. He worked for transportation of goods and parcel as loading and unloading of parcel from station to train and vice-versa.

4. According to the union work of handling parcels in a station is a work of permanent and perennial in nature. There were 151 parcel porters working at different railway stations in Nagpur division. The wages were paid directly by railway administration. They treat them as regular railway employees. Payments of parcel porter were made through station manager/Chief Parcel Supervisor at their working place. They were initially paid minimum wages prescribed by Central Government with the scale of Rs. 750-940 (RPS)-Rs. 2540-3200(VPS). Management assured them to regularize as permanent staff. In the year of 1997-98 administration draw an action plan to ensure that absorption of all casual labour on roll is completed by December 1997.

5. According to the union the workman has completed more than 120 days of continuous service till he was forcibly stop from work that is from January, 2005 against the circular issued by the management. So they pray that he must be reinstated by regularizing his service as a parcel porter and pray for consequential relief.

6. Management filed written statement by denying all material facts. They also denied workman was a member of registered trade union. So they pray that the present statement of claim is void ab-initio. They also denied that workman was recruited as a Parcel Porter and he appear before a committee for regularisation. According to the management the workman had made an application to work as a Licensed Porter and he executed the agreement the terms and condition of working as Licensed Porter at Tumsar Road Railway Station. According to the management notification dated 08.08.1994 was not for recruitment for the post of Parcel Porter but it is for the licensed porter on payment of licensed fee.

7. Management denied para no. 3 and 9 of the statement of claim by asserting that workman had been completed more than 240/120 days of his continuous service in one calendar year. It was also denied that management paid his wages as regular basis. So they cannot seek any redressal as prevailing law. So they pray that present statement of claim and reference is bad in law and is deserved to be dismissed. According to them workman is only authorized to work as licensed porter on payment of license fee. It is also denied that workman was cover under Industrial Dispute Act. According to them workman was authorized to receive handling charges of passenger luggage as per railway rules.

8. Management also denied that muster and payment sheet is maintained by the station master. According to them there is no relationship between them as a Master and servant. Management denied that 151 Parcel Porters were working in Nagpur Division in the year of 1994. It is also denied that the workman was working in different period at different

Railway Stations and he acquires a status of regular staff. According to them there is no occasion to absorb the workman in the employment of Railway. According to the management 320 candidates appear for screening out of 460 candidates. Out of those 186 candidates were selected and 38 candidates were already working at different stations.

9. According to the management Divisional Commercial Manager, S.E. Railway Nagpur had issued instructions to all Station Masters on 28.07.1995, in compliance of these instruction workman had executed an agreement of terms and conditions of working as Licensed Porter. According to the management workman was not doing the work of handling the parcel and luggage booked by the parties with Railway Administration. According to them the union also approached this Tribunal through reference no. 203/98 and 287/99, in these reference Tribunal passed award which was challenged in WP NO. 4472/2008 Before the Hon'ble High Court which was remanded back on 14.10.2009. This judgment was also challenged in LPA No. 304/2010 which is pending before the Hon'ble High Court. They also denied that there is any relationship between and employee and Railway Administration as Employee and employer. According to them workman cannot claim regularisation of his service with consequential relief, so they pray that the statement of claim filed by the Union is liable to be dismiss with exemplary cost and workman not entitled to any relief.

10. **Point of determination**

i. Whether the action of the management in denying the demand of regularization of the services of the workman is just, fair and legal?

ii. Whether the workman is entitled to any other relief.

**Reasons for decision**.

11. On behalf of the union, workman, Prakash Eknath Gawande and on behalf of the management, Smt. Mangamma Rao was examined on the basis of evidence on affidavit. They were cross-examined by opposite counsel. Both the above witnesses support their statement of claim and W.S. respectively in their chief examination. On behalf of the union, it was argued that, in 1994, workman was appointed as a Parcel Hamal/Parcel Porter by the Railway Authority after scrutiny and interview, which was conducted by Selection Committee. He also argued that, workman completed more than 240 days of continuous service. So he acquired the status of regular employee. This argument was denied by the management. Now I want to see the evidence of the workman.

12. Prakash Gawande in para 14, 15 and 19 of his cross-examination admitted that, he signed statement of claim. He did not file any document regarding appointment, qualification, receipt of fees of license porter and attendance register etc. He admitted that, he does not know the notification dated 08.08.1994, name of Station Master and pay scale of Hamal/Porter. He also denied some important fact, mentioned in para 1, 5 and 6 of his chief examination. He also admitted that, he paid license fees for License Porter, but no receipt was produced in this regard. In this way, this witness rebutted of his chief examination. Documents are also not supported his version. In my opinion, his statement is not treated as reliable.

13. Management's witness, MW-1 supported his defence, which is taken in W.S. and after reading his statement; it appears that, his statement is based on documents, because he was posted in this office in the year of 2008-09. According to him, he filed Xerox copy of agreement, but original is not available on office record. He also reiterated that he was given his statement on the basis of record. He also admitted that, said agreement was not executed before her. She also admitted that, workman was paid minimum wages, when he worked as Parcel Porter. In this way, she remained unrebutted in her court statement. Nothing came in her statement, which shows, she is prejudice with the workman or someway with the management. In this way, her statement appears to be reliable. Moreover, workman admitted documents M-1 to M-5, which supports the management's version.

14. On behalf of the union, they relied case laws, MSRTC Vs Castribe Rajya Parivahan Karmachari Union 2009 (8) SCC 556, New India Assurance Co. Vs. A. Shankaralingam 2009 (1) SCC (L&S) 55 and Union of India Vs. Subir Mukherjee 1998 (5) SCC 301, in which following principles are laid down:-

i. Part time employee is covered by definition of workman U/s 2(s) of the I.D. Act, 1947.

ii. If the work of casual labour is of perennial nature, then the workers are very much entitled to the benefits and privileges of regularization.

iii. Continuing or employing badlies, casuals or temporaries for years together, with object of depriving them of status and privileges of permanent employees is an unfair labour practice on the part of employer.

15. In para 6 of the written argument of management, asserted that, "No distinction of Licensed Porters and Parcel Porters, as alleged, since there is no such post of Parcel Porter in existence" That argument was denied by the union. The union relied case laws: U.O.I. Vs. Ram Chandra Tanti WPCT Nos. 124 to 126/200 order dated 29.03.2004, National Federation of Railway Porters Vs. Union of India 1995 II LLJ 712 and A.I. Railway parcel and Goods Porters Union vs. Union of India W.P.(Civil) No. 433/1998 date of order 22.08.2003, in which, Hon'ble Lordship hold that, "One big point

of difference between the two sets of porters is the fact that while one set is being paid for their services by the passengers directly, the other set is being paid for their labour by the authorities of the railway." In the light of above discussion and principles laid down by the Hon'ble High Court, argument of management **is not logical and not sustainable**.

16. On behalf of the management, it was argued in para 7 of their written argument that, "Applicant never worked as a Casual Labour with the Railway Administration. Therefore, there is no occasion to absorb the applicant in the employment of the Railways" and also argued that, union already filed such dispute, which came as a reference before this Tribunal. On this basis, they argued that, workmen's claim shall be rejected, because workmen did not challenge the award dated 15.07.2010 before any other court, so the workman is not entitled to any relief. The union did not deny this argument as in fact and figure. This office also provided Xerox copy of the reference of the case No. CGIT/NGP/36/2002.

17. On perusal of the record, it appears that, my predecessor in Case No. CGIT/NGP/36/2002, General Secretary, Parcel Porter Sanghatan Vs. Divisional Commercial Manager, SE Railway, Nagpur Award dated 28.03.2008 and 15.07.2010 and Hon'ble High Court's order in W.P. No. 4472/2008 held that, the members of the Respondent union are workmen and entitled to maintain the reference. My predecessor also held that, employees of Parcel Porter Sanghatana, which name mentioned in Annexure B & D are entitled for temporary status and regular pay scale, but claim of petitioners, which name mentioned in Annexure C was dismissed. Against this order, LPA No. 304/2010 is pending before the Hon'ble High Court. It also shows that, the name of the present workman, **Shri Prakash Eknath Gawande is mentioned in Annexure A at Item No. 41 of the above reference.** In this way, in the eye of law, nobody is allowed to raise same issue before this Tribunal i.e. principle of res-judicata is applied in reference, so management's argument is sustainable.

18. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, Railway has two sets of porters, but union failed to prove that, the workman was appointed by the management as a Parcel Hamal/Parcel Porter and he was working continuously for 240 days in one calendar year. On perusal of the record, it also appears that, he was simply licensed porter i.e. collie for some sort of period, but his claim was decided by this Tribunal as well as by the Hon'ble High Court and LPA is pending before the Hon'ble Court. So, workman is not entitled to raise same issue through second reference. In my opinion, the workman is not entitled to any relief i.e. matter is subjudice before the Hon'ble High Court in form of LPA. Hence, it is ordered:

**ORDER**

**The action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for regularizing the services of Shri Prakash Eaknath Gawande as Parcel Porters, is just, fair & legal. The workman is not entitled to any relief.**

S. S. GARG, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1748**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 72/2013–14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41011/105/2013–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1748.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2013-14 ) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41011/105/2013–IR(B-1)]

B.S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No.CGIT/NGP/72/2013-14** Date: 04.06.2019

**Party No. 1 :** The Senior Divisional Commercial Manager,
South East Central Railway,
Nagpur Division, Kingsway, Station Road,
Nagpur – 440001

**Versus**

**Party No. 2** : The Rajesh Supatkar, General Secretary,
Parcel Porters Sanghathan,
New Mankapur, Plot No. 37,
Nagpur (M.S.) – 440030.

**AWARD**

(Dated: 04th June 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their union, Parcel Porters Sanghathan for adjudication, as per letter **No.L-41011/105/2013-(IR (B-I) dated 23.12.2013,** with the following schedule:-

> **"Whether the action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for absorption & regularization of the services of Shri N. Srinivasa Rao S/o Shri N. Samudram as Parcel Porters, is just, fair & legal? To what relief the workman is entitled?''**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Parcel Portal Sanghtana ("the union" in short) filed the statement of claim and the management of South East Central Railway, ("Party No. 1" in short) filed its written statement.

3. On behalf of the union statement of claim was filed by asserting that the workman Shri N. Srinivasa Rao was recruited as a Parcel Hamal/Parcel Porter/Licenced Porter in the office of Party no.1. Selection process was completed by a committee followed by interview and other recruitment procedure at that time i.e. in the year of 1994 prevails. Recruitment notification was issued by Railway i.e. management party no.1 on 08.08.1994. At that time near about 300 Parcel Porters working in different Railway Stations under Nagpur Division of SEC Railway. According to the union the workman completed 240 days of continuous service in a one calendar year as a regular Parcel Porter from the date of appointment. He worked for transportation of goods and parcel as loading and unloading of parcel from station to train and vice-versa.

4. According to the union work of handling parcels in a station is a work of permanent and perennial in nature. There were 151 parcel porters working at different railway stations in Nagpur division. The wages were paid directly by railway administration. They treat them as regular railway employees. Payments of parcel porter were made through station manager/Chief Parcel Supervisor at their working place. They were initially paid minimum wages prescribed by Central Government with the scale of Rs. 750-940 (RPS)-Rs. 2540-3200(VPS). Management assured them to regularize as permanent staff. In the year of 1997-98 administration draw an action plan to ensure that absorption of all casual labour on roll is completed by December 1997.

5. According to the union the workman has completed more than 120 days of continuous service till he was forcibly stop from work that is from January, 2005 against the circular issued by the management. So they pray that he must be reinstated by regularizing his service as a parcel porter and pray for consequential relief.

6. Management filed written statement by denying all material facts. They also denied workman was a member of registered trade union. So they pray that the present statement of claim is void ab-initio. They also denied that workman was recruited as a Parcel Porter and he appear before a committee for regularisation. According to the management the workman had made an application to work as a Licensed Porter and he executed the agreement the terms and condition of working as Licensed Porter at Tumsar Road Railway Station. According to the management notification dated

08.08.1994 was not for recruitment for the post of Parcel Porter but it is for the licensed porter on payment of licensed fee.

7. Management denied para no. 3 and 9 of the statement of claim by asserting that workman had been completed more than 240/120 days of his continuous service in one calendar year. It was also denied that management paid his wages as regular basis. So they cannot seek any redressal as prevailing law. So they pray that present statement of claim and reference is bad in law and is deserved to be dismissed. According to them workman is only authorized to work as licensed porter on payment of license fee. It is also denied that workman was cover under Industrial Dispute Act. According to them workman was authorized to receive handling charges of passenger luggage as per railway rules.

8. Management also denied that muster and payment sheet is maintained by the station master. According to them there is no relationship between them as a Master and servant. Management denied that 151 Parcel Porters were working in Nagpur Division in the year of 1994. It is also denied that the workman was working in different period at different Railway Stations and he acquires a status of regular staff. According to them there is no occasion to absorb the workman in the employment of Railway. According to the management 325 candidates appear for screening out of 460 candidates. Out of those 186 candidates were selected and 38 candidates were already working at different stations.

9. According to the management Divisional Commercial Manager, S.E. Railway Nagpur had issued instructions to all Station Masters on 28.07.1995, in compliance of these instruction workman had executed an agreement of terms and conditions of working as Licensed Porter. According to the management workman was not doing the work of handling the parcel and luggage booked by the parties with Railway Administration. According to them the union also approached this Tribunal through reference no. 203/98 and 287/99, in these reference Tribunal passed award which was challenged in WP NO. 4472/2008 Before the Hon'ble High Court which was remanded back on 14.10.2009. This judgment was also challenged in LPA No. 304/2010 which is pending before the Hon'ble High Court. They also denied that there is any relationship between and employee and Railway Administration as Employee and employer. According to them workman cannot claim regularisation of his service with consequential relief, so they pray that the statement of claim filed by the Union is liable to be dismiss with exemplary cost and workman not entitled to any relief.

10. **Point of determination**

i. Whether the action of the management in denying the demand of regularization of the services of the workman is just, fair and legal?

ii. Whether the workman is entitled to any other relief.

**Reasons for decision**.

11. On behalf of the union, workman, N. Srinivasa Rao and on behalf of the management, Smt. Mangamma Rao was examined on the basis of evidence on affidavit. They were cross-examined by opposite counsel. Both the above witnesses support their statement of claim and W.S. respectively in their chief examination. On behalf of the union, it was argued that, in 1994, workman was appointed as a Parcel Hamal/Parcel Porter by the Railway Authority after scrutiny and interview, which was conducted by Selection Committee. He also argued that, workman completed more than 240 days of continuous service. So he acquired the status of regular employee. This argument was denied by the management. Now I want to see the evidence of the workman.

12. N. Srinivasa Rao in para 14 and 15 of his cross-examination admitted that, he passed class - IX examination and he did not know about the notification dated 08.08.1984, which he has mentioned in para no. 1 from A to A portion. He also admitted that, he did not file appointment letter or receipt of license of porter or any document regarding his qualification or regarding his service as a parcel porter. He also admitted that, he did not file any document relating to his attendance and wages in relation to parcel porter/parcel hamal. He also has no specific knowledge regarding his pay scale or name of Station Master or casual labour register, but he admitted that, he knows about the muster roll. In this way, he rebutted his chief examination regarding his knowledge of parcel porter/parcel hamal. It also appears that, he is illiterate.

13. N. Srinivasa Rao, PW-1 in para no. 19, 20 and 22 of his cross-examination, admitted that, he paid license fees for license porter, but he denied that, he filed any reference regarding parcel porter with Rajesh Supatkar. He also denied that, his case was dismissed by the CGIT and Hon'ble High Court due to non-appearance. He also admitted that, he did not read, what is mentioned in document D-1, because he does not know English. In this way, he rebutted main fact, which is asserted in statement of claim and in affidavit examination in chief.

14. Management's witness, MW-1 supported his defence, which is taken in W.S. and after reading his statement; it appears that, his statement is based on documents, because he was posted in this office in the year of 2008-09. According to her, she filed Xerox copy of agreement, but original is not available on office record. She also reiterated that she was given her statement on the basis of record. She also admitted that, said agreement was not executed before her. She also admitted that, workman was paid minimum wages, when he worked as Parcel Porter. In this way, she

remained unrebutted in her court statement. Nothing came in her statement, which shows, she is prejudice with the workman or someway with the management. In this way, her statement appears to be reliable. Moreover, workman admitted documents M-1 to M-5, which support the management's version.

15. On behalf of the union, they relied case laws, MSRTC Vs Castribe Rajya Parivahan Karmachari Union 2009 (8) SCC 556, New India Assurance Co. Vs. A. Shankaralingam 2009 (1) SCC (L&S) 55 and Union of India Vs. Subir Mukherjee 1998 (5) SCC 301, in which following principles are laid down:-

i. Part time employee is covered by definition of workman U/s 2(s) of the I.D. Act, 1947.

ii. If the work of casual labour is of perennial nature, then the workers are very much entitled to the benefits and privileges of regularization.

iii. Continuing or employing badlies, casuals or temporaries for years together, with object of depriving them of status and privileges of permanent employees is an unfair labour practice on the part of employer.

16. On behalf of the management, it was argued in para 7 of their written argument that, "Applicant never worked as a Casual Labour with the Railway Administration. Therefore, there is no occasion to absorb the applicant in the employment of the Railways" and also argued that, union already filed such dispute, which came as a reference before this Tribunal. On this basis, they argued that, workmen's claim shall be rejected, because workmen did not challenge the award dated 15.07.2010 before any other court, so the workman is not entitled to any relief. The union did not deny this argument as in fact and figure. This office also provided Xerox copy of the reference of the case No. CGIT/NGP/36/2002.

17. On perusal of the record, it appears that, my predecessor in Case No. CGIT/NGP/36/2002, General Secretary, Parcel Porter Sanghatan Vs. Divisional Commercial Manager, SE Railway, Nagpur Award dated 28.03.2008 and 15.07.2010 and Hon'ble High Court's order in W.P. No. 4472/2008 held that, the members of the Respondent union are workmen and entitled to maintain the reference. My predecessor also held that, employees of Parcel Porter Sanghatana, which name mentioned in Annexure B & D are entitled for temporary status and regular pay scale, but claim of petitioners, which name mentioned in Annexure C was dismissed. Against this order, LPA No. 304/2010 is pending before the Hon'ble High Court. It also shows that, the name of the present workman, **Shri N. Srinivasa Rao is mentioned in Annexure C at Item No. 72 of the above reference.** In this way, in the eye of law, nobody is allowed to raise same issue before this Tribunal i.e. principle of res-judicata is applied in reference, so management's argument is sustainable.

18. Judging the present case in hand with the touch stone of the principles as mentioned above, as I observed that, Railway has two sets of porters, but union failed to prove that, the workman was appointed by the management as a Parcel Hamal/Parcel Porter and he was working continuously for 240 days in one calendar year. On perusal of the record, it also appears that, he was simply licensed porter i.e. collie for some sort of period, but his claim was decided by this Tribunal as well as by the Hon'ble High Court and LPA is pending before the Hon'ble Court. So, workman is not entitled to raise same issue through second reference. In my opinion, the workman is not entitled to any relief i.e. matter is subjudice before the Hon'ble High Court in form of LPA. Hence, it is ordered:

**ORDER**

**The action of the Senior Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur in denying the demand for regularizing the services of Shri N. Srinivasa Rao S/o Shri N. Samudram as Parcel Porters, is just, fair & legal. The workman is not entitled to any relief.**

S. S. GARG, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1749**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 24/2014–15) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–41011/70/2014–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1749.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2014-15) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 19.09.2019.

[No. L-41011/70/2014– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/24/2014-15** Date: 18.06.2019

**Party No.1(a)** : The Divisional Railway Manager,
South East Central Railway,
Kingsway, Station Road,
Nagpur – 440001.

**Party No.1(b)** : The Chief Personnel Officer (IR),
South East Central Railway,
Bilaspur (CG).

**Versus**

**Party No.2** : The General Secretary,
Parcel Porter Sanghatana,
New Mankapur, Plot No. 37,
Mhada Colony ke pass,
Nagpur – 440030.

**AWARD**

(Dated: 18th June, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their union, Parcel Porter Sanghatana for adjudication, as per letter **No.L-41011/70/2014 (IR (B-I) dated 07.10.2014,** with the following schedule:-

> **"Whether the action of the management of South East Central Railway, Nagpur in declining the claim of Smt. Urmila W/o Late Vasant Warsagade for compassionate appointment in lieu of death of her husband late Vasant Warsagade, is fair, just or legal? If not, to what relief is entitled to the concerned dependent of deceased workman?''**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. Accordingly the parties filed their respective statement of claim and written statement. The General Secretary of the union filed an application to withdraw the reference, which is marked as I.A. No. 1. Management has no objection. Heard both the parties.

3. Fact mentioned in this application is that, the workman's wife filed this claim on the basis of compensatory appointment. According to them, Writ Petition No. 1142/2011 has been decided by the Hon'ble High Court as well as by the Apex Court. In the light of above judgment, they want to withdraw this reference. So, application I.A. No. 1 is allowed. Hence, it is ordered:

**ORDER**

**The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.**

S. S. GARG, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2019

**का. आ. 1750**.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईडीबीआई बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 26/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल–12011/13/2014–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th September, 2019

**S.O. 1750.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Kolkata as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen, received by the Central Government on 19.09.2019.

[No. L-12011/13/2014– IR(B-1)]

B. S. BISHT, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA**

**Reference No. 26 of 2014**

**Parties:** Employers in relation to the management of IDBI Bank Ltd.

**AND**

**Their workmen**

**Present:** Justice Ravindra Nath Mishra, Presiding Officer

**Appearance:**

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 22nd August, 2019 Industry: Banking

**AWARD**

By Order No.L-12011/13/2014-IR(B-I) dated 03.03.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management of IDBI Intech Ltd. working as outsourcing company under IDBI Bank Ltd. in terminating the services of 12 Direct Sales Team Employees as per the list enclosed w.e.f. 27.12.2012 without paying the retrenchment compensation under Section 25F of I.D. Act, 1947 is justified? If not, to what relief the workmen are entitled to?''*

3. When the case was taken up for hearing on 21.08.2019, none appeared for the parties concerned. It transpires from record that this reference is pending in this Tribunal since 13.03.2014 and the parties entered appearance through their respective learned counsel and the union filed its statement of claim and the management also filed its written statement, but inspite of all the opportunities, the union has not filed its rejoinder nor it has adduced any evidence in support of its claim as made in the statement of claim. Union is found absent since 11.06.2018, i.e., on eight consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of retrenchment of the concerned 12 Direct Sales Team Employees as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 22nd August, 2019

नई दिल्ली, 19 सितम्बर, 2019

**का.आ. 1751.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय बीज मसाला अनुसन्धान केंद्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 99/2005, 101/2005, 102/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/193, 191, 192/2005–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 19th September, 2019

**S.O. 1751.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2005, 101/2005, 102/2005)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Director, National Seed Masala Anusandhan center and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/ 193, 191, 192 /2005 –IR (CM-II)]

S. C. RAY, Section Officer

**अनुबंध**

**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर**

**सी.जी.आई.टी. प्रकरण सं. 99/ 2005, 101 / 2005, & 102 / 2005**

**पीठासीन अधिकारी :** राधामोहन चतुर्वेदी

(1) रेफरेन्स नं. L- 42012/193/2004–IR(CM-II) दिनांक 2/8/2005

(2) रेफरेन्स नं. L- 42012/191/2004–IR(CM-II) दिनांक 4/8/2005

(3) रेफरेन्स नं. L- 42012/192/2004–IR(CM-II) दिनांक 4/8/2005

1. श्रीमती कमला पुत्री स्व. श्री लाखा, जाति प्रजापत, निवासी–पोस्ट सराधना, जिला –अजमेर।
2. श्रीमती गीता पत्नी श्री कैलाशगिरी, उम्र 47 वर्ष लगभग, निवासी–बस स्टैण्ड के पास, ग्राम सराधना, जिला –अजमेर।
3. श्रीमती सुशीला पत्नी स्व. श्री सूरजकरण लुहार, उम्र 45 वर्ष, जाति लुहार, निवासी–बाला जी मन्दिर के पास, ग्राम सराधना, जिला –अजमेर। –प्रार्थीगण श्रमिक

**बनाम**

राष्ट्रीय बीजीय मसाला अनुसन्धान केन्द्र जरिये उसके निदेशक तबीजी, –जिला अजमेर –अप्रार्थी नियोजक

**उपस्थित :**

प्रार्थीगण की तरफ से : श्री दीपक मेहता – एडवोकेट

अप्रार्थी की तरफ से : कोई नहीं

**: अधिनिर्णय :**

दिनांक : 9. 8. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा उपर्युक्त तीनों प्रार्थीगण के सम्बन्ध में औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (खण्ड घ) द्वारा प्रद्धत शक्तियों के प्रयोग में निम्नांकित (समेकित) औद्योगिक विवाद इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किये गये : –

> ''क्या निदेशक, राष्ट्रीय बीजीय मसाला अनुसन्धान केन्द्र, तबीजी, अजमेर द्वारा अपने कर्मकार श्री मति कमला पत्नि श्री लाखा, श्रीमति गीता पत्नि श्री कैलाशगिरी एवँ श्रीमति सुशीला पत्नि श्री सूरजकरण लुहार कैजुअल लेबर को दिनांक 11.5.2003 को सेवा से बर्खास्त करना न्यायोचित एवं विधि सम्मत है? यदि नहीं तो कर्मकार अपने नियोजक से किस राहत को पाने के अधिकारी हैं ?''

2. उपर्युक्त संदर्भित विवादों के प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया एवं प्रार्थीगण को उनके दावे के अभिकथन प्रस्तुत करने का निर्देश दिया गया।

3. दिनांक 27.9.2005 को प्रार्थीगण ने अपने –अपने दावे के अभिकथन प्रस्तुत किये। ये तीनों ही विवाद विपक्षी द्वारा प्रार्थीगण की दिनांक 11.5.2003 को की गई सेवासमाप्ति की वैधता के परीक्षण से सम्बन्धित हैं। इसलिये तथ्यों व साक्ष्य की समानता को दृष्टिगत रख तीनों विवादों का न्यायनिर्णयन एकीकृत रूप से किया जा रहा है।

4. प्रार्थीगण का कथन है कि वे विपक्षी संस्थान में 1.9.2000 से लगातार एवं नियमित रूप से फील्ड कर्मकार के पद पर दिनांक 10.05.2003 तक सेवारत थीं। प्रार्थीगण की उपस्थिति दैनिक रूप से अंकित की जाकर मासिक वेतन दिया जाता था। प्रार्थीगण से लिया गया कार्य ना तो अनुबन्ध का था और ना ही अस्थायी प्रकृति का। विपक्षी ने अवैध रूप से दिनांक 11.5.2003 को प्रार्थीगण को कार्य पर नहीं लिया और यह आश्वासन दिया कि कुछ दिन बाद कार्य पर ले लिया जावेगा। किन्तु कार्य पर नहीं लिया। प्रार्थीगण ने समझौता अधिकारी अजमेंर के समक्ष परिवाद भी किया। विपक्षी ने अधिनियम के प्रावधानों के विरूद्ध प्रार्थीगण को सेवा से बर्खास्त किया। अतः प्रार्थीगण को पूर्ण विगत वेतन एवं परिलाभों सहित सेवा में बहाल किया जावें।

5. दिनांक 28.11.2005 को विपक्षी ने अपने प्रति उत्तर प्रस्तुत करते हुए दावों को अस्वीकार किया। विपक्षी का कथन है कि उसने प्रार्थीगण को कभी भी किसी भी रूप में सेवा में नियोजित नहीं किया। इसलिये सेवा समाप्ति के सम्बन्ध में कोई विवाद उठाया ही नहीं जा सकता। विपक्षी के अधीन अनुसन्धान से सम्बन्धित कई स्तरों पर ऐसे आकस्मिक कार्य उपलब्ध होते हैं, जो एक विशेष अवधि में समाप्त भी होते हैं। कार्य की आकस्मिक आवश्यकता के आधार पर आकस्मिक श्रमिकों की आवश्यकता होती है, जिसे ठेके पर ठेकेदार के माध्यम से सम्पादित करवाया जाता है। प्रार्थीगण ने जिस ठेकेदार के माध्यम से विपक्षी संस्थान पर कार्य किया हो, उसे दावे में पक्षकार बनाना चाहिये था। प्रार्थीगण ने भारतीय कृषि अनुसन्धान परिषद को भी पक्षकार नहीं बनाया है जबकि विपक्षी इसी संस्थान का अंग है। विपक्षी उद्योग की परिभाषा में नहीं आता है। प्रार्थीगण एवं विपक्षी के मध्य नियोजक एवं कर्मकार का सम्बन्ध स्थापित नहीं हुआ है। उनका यह भी तर्क है कि ठेकेदार और विपक्षी के बीच अनुबन्ध की शर्त के अनुसाार ठेकेदार कार्य संपादन करता है। दिये गये कार्य के सम्पादन के लिये श्रमिकों को नियोजित करने एवं हटाने सम्बन्धित सम्पूर्ण दायित्व ठेकेदार का ही होता है। विपक्षी के अधीन फील्ड कर्मकार का कोई पद नहीं है। ठेकेदार आवश्कतानुसार श्रमिकों को लगाकर उनका भुगतान करता है। अतः दावा अस्वीकार किया जावें।

6. उभयपक्ष के अभिवचनों के आधार पर इन विवादों में निम्नांकित विचारणीय बिन्दु दिनांक 14.12.2005 को निर्धारित किये गये :–

I. Whether the workman was engaged by the non-applicant establishment on 1.9.2000 as a field worker who continuously worked up to 10-5-2003 and whose service was terminated on 11-5-2003 in contravention of Section 25-F of the Act ?

II. Whether the non-applicant establishment is not an industry as defined under Section 2-J of the Act ?

III. Relief, if any.

7. प्रार्थीगण ने अपने साक्ष्य में स्वंय प्रार्थी को परीक्षित किया और प्रलेखीय साक्ष्य में प्रदर्श– डब्ल्यू 1 से डब्ल्यू 17 तक प्रलेखों को प्रदर्शित किया।

8. विपक्षी की और से साक्ष्य में लक्ष्मीकान्त शर्मा सहायक प्रशासनिक अधिकारी को परीक्षित किया गया किन्तु कोई प्रलेख प्रदर्शित नही किया गया। इस प्रकरण में दिनांक 4.2.2016 को पूर्व पीठासीन अधिकारी द्वारा उभयपक्ष की बहस सुनकर प्रकरण अधिनिर्णय हेतु आरक्षित किया गया था किन्तु 23.6.2016 को कुछ बिन्दुओं पर पुनः बहस सुनना आवश्यक मानते हुए पुनः बहस हेतु प्रकरण नियत किया जाता रहा। इसके पूर्व प्रकरण संख्या 99/2005 में प्रार्थी की और से संक्षिप्त लिखित बहस भी प्रस्तुत की गई।

9. दिनांक 18.10.2016 से विपक्षी पक्ष इन प्रकरणों में अनुपस्थित हो गया। अन्ततः 22.7.2019 को प्रार्थीगण के प्रतिनिधि के मोखिक तर्क सुने गये और उभयपक्ष की साक्ष्य का परिशीलन किया गया।

10. प्रार्थीगण के प्रतिनिधि का यह तर्क है कि प्रार्थीगण को न तो नियुक्ति और न ही सेवामुक्ति का कोई लिखित आदेश विपक्षी द्वारा दिया गया। प्रार्थीगण ने अपनी सेवा अवधि को प्रमाणित करने के लिये प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक उपस्थिति रजिस्टर की प्रतियां प्रदर्शित की है जो विपक्षी के अभिलेख से ही ली गई है। विपक्षी ने ठेके पर कार्य करवाने का कथन तो किया है किन्तु इस सम्बन्ध में न तो कोई अनुबन्ध और न ही ठेकेदार को कार्य सम्पादन के एवज में किये गये भुगतान का कोई प्रमाण प्रस्तुत किया। प्रार्थीगण की उपस्थिति और भुगतान के सभी दस्तावेज विपक्षी के पास हैं जिन्हें जानबूझकर प्रार्थीगण के पक्ष को प्रतिकूल रूप से प्रभावित करने के लिये विपक्षी ने प्रस्तुत नहीं किया। प्रार्थीगण के विरूद्ध, प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक प्रलेखों की कूटरचना करने के सम्बन्ध में कोई आपराधिक कार्यवाही भी विपक्षी ने नहीं की। इसलिये विपक्षी के विरूद्ध प्रतिकूल उपधारणा करते हुए यह प्रमाणित माना जाना चाहिये कि प्रार्थीगण ने 1.9.2000 से 10.5.2003 तक विपक्षी के अधीन 240 दिन से अधिक एक कैलेण्डर वर्ष में सेवा की है। विपक्षी द्वारा सेवासमाप्ति से पूर्व प्रार्थीगण को कोई नोटिस अथवा नोटिस वेतन एवं प्रतिकर भी नहीं दिया है। इस प्रकार ये अवैध छंटनी प्रमाणित होती है। अतः दावे स्वीकार कियें जावें। उन्होने अपने तर्कों के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये है :–

(1) (2015) 2 सुप्रीम कोर्ट कैसेज 317 सुदर्शन राजपूत बनाम यू.पी. एस.आर.टी. कॉर्पोरेशन।

(2) 2011 (130) एफ.एल.आर., 337 (सुप्रीम कोर्ट) देवेन्द्र सिंह बनाम म्यूनिसिपल काउन्सिल सानौर

(3) 2017 (2) डब्ल्यू.एल.सी. 430 (राजस्थान उच्च न्यायालय) 700 एम.डी.अर्बन कॉपरेटिव बैंक लिमिटेड जयपुर बनाम जज इण्ड्स्ट्रीयल ट्रिब्यूनल

(4) (2015) 4 सुप्रीम कोर्ट कैसेज 544 मैकिनोन मैकेनजी एण्ड कम्पनी लिमिटेड बनाम मैकिनोन एम्पलॉयीज यूनियन।

(5) (2010) 15 सुप्रीम कोर्ट कैसेज 457 म्यूनसिपल कार्पोरेशन लुधियाना बनाम जीवन सिंह व अन्य

(6) 2011 (128) एफ.एल.आर. 564 (सुप्रीम कोर्ट) अमर चक्रवर्ती व अन्य बनाम मारूति सुजुकी इण्डिया व अन्य।

(7) 1986 (2) एन.एल.आर 278 जरनैल सिंह व अन्य बनाम स्टेट ऑफ पंजाब।

(8) डब्ल्यु एल.सी. राजस्थान 1996 (1) 322, श्री अमरजैन एम.आर. सोसायटी बनाम पी.ओ. लेबर कोर्ट जयपुर

(9) 1993 (II) एल.एल.एन. 575 (सुप्रीम कोर्ट) डी. के. यादव बनाम जे.एम.ए. इण्ड्स्ट्रीज

(10) ए.आई.आर. 2010 (सुप्रीम कोर्ट)1236 डायरेक्टर फिशरिज टर्मिनल डिवीजन बनाम भीखू भाई मेघाजी भाई चावड़ा।

11. उभयपक्ष के साक्ष्य प्रार्थी पक्ष के तर्कों एवं न्यायिक दृष्टान्तों में पारित विधि के परिशीलन के उपरान्त प्रत्येक विचारणीय बिन्दु पर निर्णय इस प्रकार है :–

**बिन्दु संख्या 1 :–** इस बिन्दु के सन्दर्भ में प्रार्थीगण पर यह सिद्धिभार आरोपित है कि वे अपने मौखिक एवं लिखित साक्ष्य से यह प्रमाणित करें कि वे विपक्षीगण के अधीन फील्ड वर्कर के पद पर 1.9.2000 को सेवा में ली गई तथा दिनांक 11.5.2003 को उनकी सेवासमाप्ति के पूर्व एक केलेण्डर वर्ष की अवधि में उन्होनें विपक्षी के अधीन 240 दिन की सेवा पूर्ण कर ली है।

12. इस विधिक अध्यपेक्षा का आधार माननीय उच्चतम न्यायालय द्वारा पारित एकाधिक निर्णयों में अभिव्यक्त अधिमत है इनमें (स्वंय अधिकरण द्वारा) आर.एम.येल्लाटि बनाम असिस्टेन्ट एक्जीक्यूटिव इन्जीनियर, ए.आई.आर. 2006 (सुप्रिम कोर्ट) 355 (1) एवं रेन्ज फारेस्ट ऑफिसर बनाम एस.टी. हादिमनी (2002) 3 (एस.सी.सी.) 25 उल्लेखनीय हैं। इन निर्णयों में माननीय उच्चतम न्यायालय ने यह कहा है कि एक वर्ष में 240 दिन पूर्ण करने के तथ्य को प्रमाणित करने का सिद्धिभार दावा करने वाले प्रार्थी पर ही है। प्रार्थी को इस तथ्य को प्रमाणित करने के लिये विश्वसनीय, मौखिक व प्रलेखीय साक्ष्य प्रस्तुत करनी होगी। प्रार्थी के शपथ पत्र एवं स्वंय समर्थित कथन पर्याप्त नहीं हैं।

13. प्रार्थी की और से माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय डायरेक्टर फिशरीज डिविजन बनाम भिखुभाई मेघाजी भाई चावडा में पारित विधि का अवलम्ब लिया गया है। इस निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि एक वर्ष में 240 दिन की सेवा अवधि प्रमाणित करने हेतु एक दैनिक वेतन भोगी कर्मकार की पहुँच मस्टररोल आदि कार्यालयी अभिलेखों तक नहीं हो पाती है। इसलिये जब कर्मकार दावा करे एवं अपने साक्ष्य द्वारा यह कहे कि उसने 240 दिन सेवा की है तथा विपक्षी से सुसंगत अभिलेख प्रस्तुत करवाने की मांग भी करें, तो सिद्धिभार नियोजक पर अन्तरित होगा कि वह 240 दिन सेवा कर्मकार द्वारा न किया जाना प्रमाणित करें। इस निर्णय के तथ्यों एवं हस्तगत विवाद के तथ्यों के परिशीलन से यह तथ्यात्मक भिन्नता प्रकट होती है कि इस निर्णय में श्रम न्यायालय द्वारा नियोजक को सुसंगत अवधि से सम्बन्धित प्रलेख प्रस्तुत करने का निर्देश दिया गया था तथा इस निर्देश के उपरान्त भी नियोजक उन प्रलेखों को प्रस्तुत करने में विफल रहा था। इसलिये यह माना गया कि नियोजक ने उस पर आरोपित सिद्धिभार का उन्मोचन नहीं किया, जबकि हस्तगत विवाद में तो प्रार्थीगण ने विपक्षी से कोई प्रलेख प्रस्तुत करवाने का निवेदन ही नहीं किया। वरन् स्वंय ही उपस्थिति रजिस्टर आदि प्रलेखों की अप्रमाणित फोटोप्रति प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक प्रस्तुत की हैं। इन प्रलेखों पर विपक्षी ने स्वंय के प्रलेखों की प्रतियां न होने का आक्षेप करते हुए इन्हें कूटरचित कहा है। साथ ही प्रार्थीगण के विरूद्ध मिथ्या साक्ष्य प्रस्तुत करने हेतु अपराधिक कार्यवाही करने का निवेदन भी किया है। इस स्थिति में विपक्षी द्वारा प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक फोटो प्रतियों के मूल प्रलेखों को प्रार्थी से प्रस्तुत करवाने का आवेदन भी किया गया है। इस प्रकार इस निर्णय में पारित विधि प्रार्थी के पक्ष में तथ्यात्मक भिन्नता के कारण सहायक नहीं है।

14. प्रार्थीगण से यह अपेक्षित था कि वे विपक्षी से सुसंगत ऐसे प्रलेखों, जो उनकी उपस्थिति व वेतन भुगतान का प्रमाण हो सकते हों, प्रस्तुत करवाने हेतु अधिकरण से निवेदन करती। अधिकरण द्वारा विपक्षी को यदि प्रलेखों के प्रस्तुतिकरण का आदेश दिया जाता तथा विपक्षी द्वारा उन प्रलेखों के अस्तित्व में होते हुए भी उन्हें प्रस्तुत नहीं किया जाता, तब ही विपक्षी के विरूद्ध प्रतिकूल उपधारणा किये जाने का कोई आधार निर्मित होता। विपक्षी साक्षी लक्ष्मीकान्त शर्मा ने सशपथ कहा है कि संलग्न दस्तावेज न तो अप्रार्थी संस्थान से जारी हुए है न ही इस प्रकार के दस्तावेज अप्रार्थी संस्थान में अस्तित्व में हैं।

15. प्रार्थीगण ने प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक हाजरी रजिस्टर की फोटोप्रतियां प्रस्तुत की है। इन फोटोप्रतियों पर किसी भी विपक्षी के प्राधिकारी के हस्ताक्षर अथवा प्रमाणीकरण अंकित नहीं है। इन उपस्थिति रजिस्टर्स पर ''मसाला अनुसन्धान केन्द्र तबीजी, अजमेर'' मुद्रित है जबकि विपक्षी संस्थान का नाम ''राष्ट्रीय बीजीय अनुसन्धान केन्द्र, तबीजी अजमेर है।'' प्रार्थीगण द्वारा प्रस्तुत विपक्षी का पत्र प्रदर्श डब्ल्यू 5 यह स्पष्ट दर्शाता है कि इस पत्र के बायें कोनें पर विपक्षी का मोनोग्राम (गुम्फाक्षर) तथा दूरभाष नम्बर भी मुद्रित किये गये है। इस स्थिति में प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक जो फोटोप्रतियों प्रस्तुत की गई उन पर विपक्षी संस्थान का नाम व मोनोग्राम मुद्रित न होना इन प्रलेखों का विपक्षी से कोई सम्बन्ध न होना अथवा विपक्षी के प्रलेखों की प्रतियां न होना प्रमाणित करता है। प्रार्थी कमला एवं गीता ने अपने साक्ष्य में इन हाजरी रजिस्टर्स के मूल कागजात सुशीला (सह–प्रार्थी) के पास होना कहा है, किन्तु सुशीला अपने सशपथ कथन में इस तथ्य को अस्वीकार करती है। प्रार्थी गीता के अनुसार उसने सुशीला के आधिपत्य वाले मूल प्रलेखों से ही फोटोप्रतियाँ करवायी। साक्ष्य की इस स्थिति से, प्रार्थीगण द्वारा मूल प्रलेखों को अकारण छिपाते हुए तथा विपक्षी से प्रस्तुत करवाने का आवेदन किये बिना ही फोटोप्रतियों को साक्ष्य में प्रदर्शित करना प्रमाणित होता है।

किसी भी प्रलेख की फोटोप्रति जब तक मूल प्रलेख का आधिपत्य रखने वाले व्यक्ति अथवा प्राधिकारी द्वारा अनुप्रमाणित न की जावें, साक्ष्य में ग्रहण किये जाने योग्य नहीं होती ।

16. प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक रजिस्टर्स में वर्णित तथ्यों के सम्बन्ध में प्रार्थीगण के सशपथ कथन विरोधाभासी भी प्रकट हुए है। प्रार्थी सुशीला कहती है कि उसे महिने के हिसाब से पहले 1500 रूपये देते थे बाद में 1800 रूपये देते थे। पैसे लेने के बाद वह रजिस्टर में हस्ताक्षर करती थी। किन्तु सितम्बर एवं अक्टूबर 2000 जो कि प्रार्थी के सेवा में आने के प्रारम्भिक महिने हैं, से सम्बन्धित रजिस्टर प्रदर्श– डब्ल्यू 7 व डब्ल्यू 8 में प्रार्थी सुशीला को 1500 रूपये मासिक वेतन दिये जाने का अंकन न होकर प्रारम्भ से ही 1800 रूपये अंकित किया गया है। यह विरोधाभास प्रार्थी सुशीला के कथनों या हाजरी रजिस्टर में वर्णित तथ्यों में से किसी एक को मिथ्या प्रमाणित करता है। साक्ष्य की इस स्थिति में प्रार्थीगण द्वारा प्रस्तुत हाजरी रजिस्टर की फोटोप्रतियां प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक किसी प्रकार विश्वसनीय एवं साक्ष्य में ग्राह्य नहीं हैं। चूंकि ये फोटोप्रतियां विपक्षी के किसी अभिलेख की होना भी प्रमाणित नहीं हुआ है इसलिये इनके मूल प्रलेखों के प्रस्तुतीकरण की विपक्षी से अपेक्षा भी विधितः नहीं की जा सकती। यह नहीं कहा जा सकता है कि विपक्षी ने विवादित बिन्दु पर उपलब्ध सर्वोत्तम साक्ष्य को जानबूझकर प्रस्तुत नहीं किया हो।

17. जहॉ तक प्रार्थीगण के विरूद्ध मिथ्या साक्ष्य प्रस्तुत करने के कारण आपराधिक कार्यवाही किये जाने का प्रश्न है, मेरे अभिमत से प्रकरण के तथ्यों एवं परिस्थितियों पर विचार के उपरान्त यह उचित नहीं होगा, क्योंकि प्रार्थी गीता के कथन में यह स्वीकारोक्ति स्पष्ट रूप से की गई है कि उसे सर्वप्रथम संजय ठेकेदार ने लगाया था किन्तु काम दफ्तर वाले लेते थे। इस स्थिति में ठेकेदार द्वारा प्रार्थीगण को नियोजित किये जाने के कारण यह सम्भावना भी निर्मूल नहीं है कि प्रार्थीगण ने प्रदर्श 7 से 17 फोटोप्रतियां किसी ठेकेदार द्वारा संधारित किये गये हाजरी रजिस्टर से करवायी हों, तथा स्वंय को विपक्षी संस्थान द्वारा नियोजित दर्शाने के लिये इन प्रतियों को वे विपक्षी के रजिस्टर होना कहती हो। इसके अतिरिक्त यह भी महत्वपूर्ण है कि प्रार्थीगण ने प्रदर्श– डब्ल्यू 7 से डब्ल्यू 17 तक रजिस्टर की फोटोप्रतियां सितम्बर 2000 से जुलाई 2001 तक की अवधि की ही प्रस्तुत की हैं, इसके पश्चातवर्ती अगस्त 2001 से मई 2003 तक के उपस्थिति रजिस्टर न तो प्रार्थीगण ने विपक्षी से प्रस्तुत करवाने का निवेदन किया और न हीं स्वंय प्रस्तुत किये हैं। इस प्रकार सेवासमाप्ति (11.5.2003) के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन सेवा करने सम्बन्धी कोई भी प्रलेख प्रस्तुत करने में प्रार्थीगण नितान्त विफल रही है।

18. प्रार्थी गीता अपने साक्ष्य में ठेकेदारों के रजिस्टर के रूप में प्रदर्श 5 को चिन्हित करती है। यह प्रलेख स्वंय प्रार्थीगण द्वारा ही साक्ष्य में प्रदर्शित है तथा विपक्षी ने भी इस पर कोई आक्षेप नहीं किया है। प्रदर्श 5 पत्र विपक्षी द्वारा सहायक श्रम आयुक्त केन्द्रीय अजमेर के समक्ष प्रस्तुत किया गया प्रतिउत्तर दिनांक 2.10.2004 है, जिसे प्रार्थीगण के परिवाद के उत्तर में प्रस्तुत किया गया है। इसी पत्र के साथ ठेके पर ठेकेदारों को सौंपे गये कार्यों का अवधि सहित विवरण भी दिया गया है। चूंकि, यह प्रार्थी द्वारा प्रदर्शित प्रलेख है इसलिये प्रार्थीगण इसकी वास्तविकता को विधितः अस्वीकार नहीं कर सकती हैं। विपक्षी साक्षी लक्ष्मी कान्त शर्मा ने अपने साक्ष्य में यह कहा हे कि प्रदर्श 5 प्रतिउत्त्र उन्होने प्रस्तुत किया था। इस पत्र के साथ संलग्न अनुसूची में विपक्षी द्वारा विभिन्न कार्यों को पृथक–पृथक अवधि के लिये कतिपय ठेकेदारों को आबंटित किया जाना प्रकट होता है। ऐसा प्रतीत होता है कि प्रार्थीगण ने किसी ठेकेदार द्वारा नियोजित किये जाने पर विपक्षी संस्थान में कार्य किया होगा एंव ठेकेदार से उसका पारिश्रमिक प्राप्त किया होगा। किन्तु वास्तविकता को छुपाकर उन्होनें विपक्षी संस्थान को स्वंय का नियोजक प्रमाणित करने का प्रयास किया, जिसमें प्रार्थीगण सफल नहीं हुई। प्रार्थीगण यह प्रमाणित करने में विफल रही हैं कि उन्होनें 1.9.2000 से 10.5.2003 तक विपक्षी के अधीन लगातार कार्य किया है तथा सेवासमाप्ति की कथित तिथि दिनांक 11.5.2003 के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन कार्य भी किया हो।

19. प्रार्थीगण द्वारा प्रस्तुत अन्य न्यायिक दृष्टान्तों में पारित निर्णय प्रार्थीगण के पक्ष समर्थन हेतु सहायक प्रतीत नहीं होते हैं। माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय म्यूनसिपल कार्पोरेशन बनाम जीवन सिंह व अन्य, अमर चक्रवर्ती व अन्य बनाम मारूति सुजुकी इंडिया लि. जरनैल सिंह बनाम स्टेट ऑफ पंजाब तथा डी. के. यादव बनाम जे.एम.ए. इण्ड्स्ट्रीज में कर्मकार की

कदाचरण व दोष के आधार पर सेवा समाप्ति किये जाने के सन्दर्भ में उन्हें प्रतिरक्षा तथा सुनवाई का अवसर दिये बिना सेवामुक्त किया जाना अवैध ठहराया गया है।

20. श्री अमर जैन मेडिकल रिलीफ सोसायटी बनाम पी.ओ. लेबर कोर्ट जयपुर के निर्णय में माननीय राजस्थान उच्च न्यायालय द्वारा चयन प्रक्रिया के अंतर्गत स्थायी पद के विरूद्ध प्रारम्भ में 2 माह के लिये नियोजित किये जाने तत्पश्चात अवधि बढाने तथा गत तिथि से कार्य शेष न रहने के आधार पर बिना नोटिस दिये की गई सेवासमाप्ति को अधिनियम की धारा 2 (ओओ) (बी.बी.) से आच्छादित नहीं होना माना है।

21. माननीय उच्चतम न्यायालय द्वारा सुदर्शन राजपूत बनाम यू.पी. एस.आर.टी.कार्पोरेशन में एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य करने वाले कर्मकार की बिना नोटिस दिये सेवा समाप्त करना जबकि कार्य स्थायी प्रकृति का होते हुए संविदा पर करवाया जाना अवैध माना है।

22. मैनेजिंग डायरेक्टर अर्बन कॉ–ऑपरेटिव बैंक लिमिटेड बनाम जज इण्ड्स्ट्रीज ट्रिब्यूनल तथा मैकेनोन मैकेन्जी एण्ड कम्पनी लिमिटेड बनाम मैकिनोन एम्पलॉयीज यूनियन के निर्णयों में अधिकरण की धारा 25 (जी) एवं (एच) के प्रावधानों के उल्लंघन में की गई सेवासमाप्ति को अवैध ठहराया गया है।

23. साक्ष्य एवं विधि के विवेचन के उपरान्त, चूंकि प्रार्थीगण द्वारा विपक्षी के अधीन एक केलेण्डर वर्ष की अवधि में 240 दिन सेवा पूर्ण करने का तथ्य तथा विपक्षी के अधीन उनके नियोजित होने के तथ्य प्रमाणित नहीं किये गये है, इसलिये विपक्षी संस्थान प्रार्थीगण का नियोजक होना ही प्रमाणित नहीं होता है। परिणाम स्वरूप विपक्षी द्वारा कथित सेवासमाप्ति के पूर्व अधिनियम की धारा 25 एफ के प्रावधानों के अनुपालन में एक माह का नोटिस या नोटिस वेतन दिया जाना एवं छंटनी प्रतिकर का भुगतान किये जाने की आवश्यकता ही उत्पन्न नहीं होती है। अतः यह बिन्दु प्रार्थीगण के विरूद्ध निर्णीत किया जाता है।

24. **बिन्दु संख्या 2 :–** इस बिन्दु का सिद्धिभार विपक्षी पर आरोपित है किन्तु विपक्षी द्वारा इस सम्बन्ध में कोई तर्क, साक्ष्य अथवा विधि प्रस्तुत नही किये गये हैं। इसलिये यह प्रमाणित नहीं माना जा सकता कि विपक्षी संस्थान अधिनियम की धारा 2 ( जे ) में दी गई परिभाषा के अनुसार ''उद्योग'' न हों। अतः यह बिन्दु विपक्षी के विरूद्ध निर्णीत किया जाता है।

25. **बिन्दु संख्या 3 :–** बिन्दु संख्या 1 पर पारित निर्णय के अनुसार प्रार्थीगण विपक्षी संस्थान के नियोजन में 1.9.2000 से 10.5.2003 तक सेवारत होने तथा एक केलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लेने का तथ्य प्रमाणित नहीं कर सकी है। इसलिये विपक्षी संस्थान द्वारा प्रार्थीगण को दिनांक 11.5.2003 को सेवा से बर्खास्त करना भी प्रमाणित नहीं हुआ है। इसलिये प्रार्थीगण विपक्षी से कोई अनुतोष प्राप्त करने की अधिकारी नहीं है। प्रार्थीगण द्वारा प्रस्तुत दावे अस्वीकार किये जाने योग्य हैं।

## आदेश

26. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

27. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1752.**–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण– सह - श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 02/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/29/2004–आईआर (सीएम–II]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1752.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 02/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/29/2004 –IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW**

**PRESENT :** RAKESH KUMAR**,** PRESIDING OFFICER

**I.D. No. 02/2005**

**Ref. No. L-42012/29/2004– IR (CM-II) dated: 22.12.2004**

**BETWEEN :**

Sh. Devi Singh, S/o Sh. Summera
R/o Nagar Sikari, 4, Hissa Phetapur Sikri
Dist. – Agra, AGRA (UP)

**AND**

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/29/2004– IR (CM-II) dated: 22.12.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Devi Singh, S/o Sh. Summera, R/o Nagar Sikari, 4, Hissa Phetapur Sikri, Agra (UP) and the Superintending Archaeologist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 282001 for adjudication.

3. The reference under adjudication is:

*"WHETHER THE ACTION OF THE MANAGEMENT OF ARCHAEOLOGICAL SURVEY OF INDIA, AGRA IN TERMINATING THE SERVICES OF SH. DEVI SINGH, S/O SH. SUMMERA, STONE CUTTER W.E.F. 1.2.2003 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF HE IS ENTITLED?"*

3. The case of the workman, Devi Singh, in brief, is that he had been working with the ASI, Agra for last more than 12 years as Stone Cutter who was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 01.02.2003 in illegal way without assigning any reason or charge sheet or retrenchment compensation. The workman has alleged that the management has engaged one Sri Laxman s/o Sh. Genda in his place and other hundreds of workmen. The workman has submitted that the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services and he demanded accordingly, but, the management terminated his services w.e.f. 01.02.2003, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages etc.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work and has never worked for 240 days in any calendar year. The management has submitted that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement

does not amount to termination so as to attract any provision of law; moreover, the management has submitted that the workman had been engaged for 111 days in 1999, for 126 days in 2000 and 147 days in 2001 only. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the union has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for 12 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

*(i) Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

*(ii) Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

*(iii) State vs. Harchad 2001 (90) FLR 744 (Raj)*

*(iv) Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

*(v) Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

*(vi) Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

*(vii) Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

*(viii) Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

*(ix) Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

*(x) Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI for more than 12 years and had been terminated w.e.f. 01.02.2003 his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman's union has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

> ***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***
>
> Hon'ble Apex Court has further observed that:
>
> ***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman's union has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16 It was the case of the workman that he had been working with the management of the ASI and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that he was engaged in 1992 and the management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workmen in his place. He also stated that Raghuveer and Ram Veer who were engaged with him are still working and had been granted temporary status. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that seniority list is being maintained in respect of daily wagers.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls vide order dated 04.04.2005. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness stated that seniority list is being maintained in respect of daily wagers and also in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. However, it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged w.e.f. 1992 and had been terminated illegally w.e.f. 01.02.2003 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that

category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

> ***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.''***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

> ***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

> ***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take their services for maintenance of monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll, then it could be well understood that to look after the monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of daily wagers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above.

LUCKNOW

27th August, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1753**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 111/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/24/2004–आईआर (सीएम-II]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1753.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 111/2004*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/24/2004 –IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW**

**PRESENT:** RAKESH KUMAR**,** PRESIDING OFFICER

**I.D. No. 111/2004**

**Ref. No. L-42012/24/2004– IR (CM-II) dated: 04.10.2004**

**BETWEEN :**

Sh. Hari Singh, S/o Sh. Mann Singh
Niwasi Nagar Sikari, 4, Hissa Fatehpur Sikri
Dist. – Agra, AGRA (UP)

**AND**

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/24/2004– IR (CM-II) dated: 04.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Hari Singh, S/o Sh. Mann Singh, Niwasi Nagar Sikari, 4, Hissa Fatehpur Sikri, Agra (UP) and the Superintending Archaeologist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 282001 for adjudication.

2. The reference under adjudication is:

*"KYA ADHIKSHAN PURATATVAVID, BHARTIYA PURATATV SARVEKSHAN, AGRA DWARA KARMKAAR SHRI HARI SINGH ATMAJ SHRI MAAN SINGH KO DINANK 9.7.2002 SE SEWA SE PRITHAK KIYA JANA NYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAKDAAR HAI?"*

3. The case of the workman, Hari Singh, in brief, is that he had been working with the ASI, Agra for last more than 10 years was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 09.07.2002 in illegal way without assigning any reason or charge sheet or retrenchment compensation. The workman has alleged that the management has engaged one Sri Bijendera s/o Sh. Tularam in his place and other hundreds of workmen. The workman has submitted that the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services and he demanded accordingly, but, the management terminated his services w.e.f. 09.07.2002, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages etc.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work and has never worked for 240 days in any calendar year. The management has submitted that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement does not amount to termination so as to attract any provision of law; moreover, the management has submitted that the workman had been engaged from August, 1997 to July, 2002 only as a temporary worker. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the union has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for 10 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

*(i) Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

*(ii) Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

*(iii) State vs. Harchad 2001 (90) FLR 744 (Raj)*

*(iv) Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

*(v) Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

*(vi) Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

*(vii) Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

*(viii) Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

*(ix) Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

*(x) Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI for more than 10 years and had been terminated w.e.f. 09.07.2002 his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman's union has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by

means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

> ***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***
>
> Hon'ble Apex Court has further observed that:
>
> ***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman's union has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16 It is the case of the workman that he had been working with the management of the ASI and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that he was engaged in 1992 and the management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workmen in his place. He also stated in the cross-examination that Bijendera had been engaged in his place. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that seniority list is being maintained in respect of daily wagers.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management

submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness stated that seniority list is being maintained in respect of daily wagers and also in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. However, it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management, primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged for 10 years and had been terminated illegally w.e.f. 09.07.2002 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take their services for maintenance of monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll, then it could be well understood that to look after the monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of daily wagers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the

management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above

LUCKNOW

28th August, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1754**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या -112/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/25/2004–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1754.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 112/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/25/2004 –IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW**

**PRESENT:** RAKESH KUMAR**,** PRESIDING OFFICER

**I.D. No. 112/2004**

**Ref. No. L-42012/25/2004– IR (CM-II) dated: 04.10.2004**

**BETWEEN :**

Sh. Prakash S/o Sh. Kalua
R/o Nagar Sikari, 4, Hissa Fatehpur Sikri
Dist. – Agra, AGRA (UP)

**AND**

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/25/2004– IR (CM-II) dated: 04.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Prakash S/o Sh. Kalua, R/o Nagar Sikari, 4, Hissa Fatehpur Sikri, Agra (UP) and the Superintending Archaeologist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 282001 for adjudication.

2. The reference under adjudication is:

*3. "KYA ADHIKSHAN PURATATVAVID, BHARTIYA PURATATV SARVEKSHAN, AGRA DWARA KARMKAAR SHRI PRAKASH ATMAJ SHRI KALUA KO DINANK 28.8.2002 SE SEWA SE PRITHAK KIYA JANA NYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAKDAAR HAI?"*

3. The case of the workman, Shri Prakash, in brief, is that he had been working with the ASI, Agra for last 20 years was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 28.08.2002 in illegal way without assigning any reason or charge sheet or retrenchment compensation. The workman has alleged that the management has engaged one Sri Vinod S/o Shri Ramesh in his place and other hundreds of workmen. The workman has submitted that the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services and he demanded accordingly, but, the management terminated his services w.e.f. 28.08.2002, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages etc.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work and has never worked for 240 days in any calendar year. The management has submitted that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement does not amount to termination so as to attract any provision of law; moreover, the management has submitted that the workman had been engaged from July, 2000 to July, 2002 only as temporary worker. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the workman has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for 20 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and*

*others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

(i) *Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

(ii) *Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

(iii) *State vs. Harchad 2001 (90) FLR 744 (Raj)*

(iv) *Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

(v) *Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

(vi) *Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

(vii) *Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

(viii) *Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

(ix) *Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

(x) *Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI for more than 20 years and had been terminated w.e.f. 28.08.2002 his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***

Hon'ble Apex Court has further observed that:

***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated***

***to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16. It is the case of the workman that he had been working with the management of the ASI for last 20 years and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that he was terminated on 28.08.2002 and the management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workmen in his place. He also stated that Vinod S/o Sh. Ramesh had been engaged in his place. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that seniority list is being maintained in respect of daily wagers.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness stated that seniority list is being maintained in respect of daily wagers and also in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. However, it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management, primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged for 20 years and had been terminated illegally w.e.f. 28.08.2002 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

> ***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact."***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

> ***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

> ***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them***

***deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take their services for maintenance of monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll, then it could be well understood that to look after the monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of daily wagers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above

LUCKNOW

28th August, 2019.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1755**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 113/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/26/2004–आईआर (सीएम-II)]
एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1755.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 113/2004*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/26/2004–IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW**

**PRESENT :** RAKESH KUMAR**,** PRESIDING OFFICER

**I.D. No. 113/2004**

**Ref. No. L-42012/26/2004–IR (CM-II) dated: 04.10.2004**

**BETWEEN :**

Sh. Rameshwar, S/o Sh. Ram Prasad
R/o Nagar Sikari, 4, Hissa Fatehpur Sikri
Dist. – Agra, AGRA (UP)

AND

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/26/2004– IR (CM-II) dated: 04.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Rameshwar, S/o Sh. Ram Prasad, R/o Nagar Sikari, 4, Hissa Fatehpur Sikri, Agra (UP) and the Superintending Archaeologist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 282001 for adjudication.

2. The reference under adjudication is:

*"KYA ADHIKSHAN PURATATVAVID, BHARTIYA PURATATV SARVEKSHAN, AGRA DWARA KARMKAAR SHRI RAMESHWAR ATMAJ SHRI RAM PRASAD KO DINANK 30.1.2002 SE SEWA SE PRITHAK KIYA JANA NYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAKDAAR HAI?"*

3. The case of the workman, Devi Singh, in brief, is that he had been working with the ASI, Agra for last more than 10 years was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 30.01.2002 in illegal way without assigning any reason or charge sheet or retrenchment compensation. The workman has alleged that the management has engaged one Sri Sanyaasi s/o Sh. Hari Singh in his place and other hundreds of workmen. The workman has submitted that the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services in terms of O.M. No. 51010/2/90/Estt. (c) dt. 10.09.1993 and he demanded accordingly, but, the

management terminated his services w.e.f. 30.01.2002, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages etc.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work and has never worked for 240 days in any calendar year. The management has submitted that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement does not amount to termination so as to attract any provision of law; moreover, the management has submitted that the workman had been engaged from September, 1998 to March, 2002 only as a temporary worker. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the union has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for more than 10 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

*(i)* *Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

*(ii)* *Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

*(iii)* *State vs. Harchad 2001 (90) FLR 744 (Raj)*

*(iv)* *Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

*(v)* *Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

*(vi)* *Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

*(vii)* *Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

*(viii)* *Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

*(ix)* *Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

*(x)* *Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI for more than 10 years and had been terminated w.e.f. 30.01.2002 his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman's union has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

> ***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***
>
> Hon'ble Apex Court has further observed that:
>
> ***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman's union has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16 It is the case of the workman that he had been working with the management of the ASI and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that he was engaged in 1992 and the management has not re-engaged the

retrenched workmen on the basis of their seniority but has engaged fresh workmen in his place. He also stated in the cross-examination that one Sri Sanyaasi had been engaged in his place. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that seniority list is being maintained in respect of daily wagers and admitted that page no. 4/77 to 4/81 is seniority list of the daily wagers. The management witness also admitted that they engage new faces as per requirement of the work and do not call for old workers on the basis of their seniority.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness stated that seniority list is being maintained in respect of daily wagers and also in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. However, it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management, primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged for 10 years and had been terminated illegally w.e.f. 30.01.2002 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer them for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule

78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

> ***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

> ***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

> ***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take their services for maintenance of monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll, then it could be well understood that to look after the monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of daily wagers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces. On the contrary, the management witness in his cross-examination stated/admitted that they engage new faces as per requirement of the work and do not call for old workers on the basis of their seniority.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above.

LUCKNOW

30th August, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1756.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 114/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/27/2004–आईआर (सीएम-II)]
एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1756.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 114/2004*)* of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/27/2004 –IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW**

**PRESENT :** RAKESH KUMAR, PRESIDING OFFICER

**I.D. No. 114/2004**

**Ref. No. L-42012/27/2004– IR (CM-II) dated: 04.10.2004**

**BETWEEN :**

Sh. Lakhan, S/o Sh. Jiwan Lal
R/o Nagar Sikari, 4, Hissa Fatehpur, Sikari
Agra (U.P.)

**AND**

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/27/2004– IR (CM-II) dated: 04.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Lakhan, S/o Sh. Jiwan Lal, R/o Nagar Sikari, 4, Hissa Fatehpur Sikari, Agra (U.P.) and the Superintending Archaeologist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 282001 for adjudication.

2. The reference under adjudication is:

*"KYA ADHIKSHAN PURATATVAVID, BHARTIYA PURATATV SARVEKSHAN, AGRA DWARA SHRI LAAKHAN ATMAJ SHRI JEEVAN LAAL KO DINANK 30.1.2002 SE SEWA SE PRITHAK KIYA JANA NYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAKDAAR HAI?"*

3. The case of the workman, Lakhan Singh, in brief, is that he had been working with the ASI, Agra for more than 10 years as Meson who was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 30.01.2002 in illegal way without assigning any reason or charge sheet or retrenchment compensation; whereas he had become entitled for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. The workman has alleged that the management has engaged one Rakesh S/o Shri Tej Singh in his place and other hundreds of workmen. The workman has submitted that the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services and he demanded accordingly, but, the management terminated his services w.e.f. 30.01.2002, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages etc.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work and has never worked for 240 days in any calendar year. The management has submitted that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement

does not amount to termination so as to attract any provision of law; moreover the management has submitted that the workman had been engaed from August, 1997 to March, 2002 only as a temporary worker. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the union has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for 10 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

*(i)* *Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

*(ii)* *Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

*(iii)* *State vs. Harchad 2001 (90) FLR 744 (Raj)*

*(iv)* *Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

*(v)* *Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

*(vi)* *Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

*(vii)* *Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

*(viii)* *Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

*(ix)* *Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

*(x)* *Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI from 1995 to 30.01.2002 and terminated his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

> ***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***
>
> Hon'ble Apex Court has further observed that:
>
> ***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman's union has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16 It is the case of the workman that he had been working with the management of the ASI and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his cross-examination has stated on oath that the management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workman in his place viz. Rakesh S/o Tej Singh; and the employees engaged after him are still working and have been granted temporary status by the management of ASI. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point.

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that no seniority list is being maintained in respect of casual workers; however he admitted the paper No. 4/84 to 4/90, which is seniority list of old casual workers which was related to the regularization of employees. He also admitted that his department could not file seniority list and muster roll in respect of workmen; however the same was made available to the workman for inspection. The management witness during cross-examination stated that he could not state that when the workman was terminated in 2002 then at that time how may workmen on muster roll were engaged in Agra Circle. He also stated that he had no knowledge that how many workmen worked in different monuments from 2002 till date as there are as many as 28-30 districts and approximately 400 monuments in Agra Circle. The management witness later on admitted that the work is taken on muster roll even today and is carried on in Fatehpur Sikari. He stated that there is no provision in his department to invite any workman through letter for work. He further stated that information is displayed on the notice board and is also published in the newspapers.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness has shown his inability of having any knowledge about any seniority list of the casual workers; but in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. Hence, in view of above, it is unbelievable that the management did not maintain any seniority list in respect of casual/daily labourers and it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged w.e.f. 1995 and had been terminated illegally w.e.f. 30.01.2002 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management was ought to come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and

publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

> ***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.''***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

> ***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

> ***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take their services for maintenance of monuments, which is perennial in nature. This is a fact that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll and he further stated that there are approximately as many as 400 monuments in Agra Circle, then it could be well understood that to look after the monuments at Agra, Fatehpur Sikari, Sikandra the management of ASI would be in need of large number of daily wagers and this maintenance cannot be said of seasonal in nature as this is never ending process and continues round the year. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces. On the contrary the management witness in his cross-examination stated that there is no provision in their department to call the former workmen by giving written notice.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above.

LUCKNOW

27th August, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1757**.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय पुरात्तव सर्वेक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 115/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/28/2004–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th September, 2019

**S.O. 1757.—** In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 115/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 18.09.2019.

[No. L-42012/28/2004 – IR (CM-II)]

S. C. RAY, Section Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW**

PRESENT : RAKESH KUMAR, PRESIDING OFFICER

**I.D. No. 115/2004**

**Ref. No. L-42012/28/2004–IR (CM-II) dated: 04.10.2004**

**BETWEEN :**

Sh. Mani S/o Sh. Deepa
R/o Nagar Sikari, 4, Hissa Fatehpur, Sikri
Agra (UP)

**AND**

The Superintending Archaeologist
Archaeological Survey of India
Agra Circle, 22 Mall Road,
Agra (U.P.) – 282001

**AWARD**

1. By order No. L-42012/28/2004– IR (CM-II) dated: 04.10.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Mani S/o Sh. Deepa, R/o Nagar Sikari, 4, Hissa Fatehpur, Sikri, Agra (UP) and the Superintending Horticulturist, Archaeological Survey of India, Agra Circle, 22 Mall Road, Agra (U.P.) – 202001 for adjudication.

2. The reference under adjudication is:

*"KYA ADHIKSHAN PURATATVAVID, BHARTIYA PURATATV SARVEKSHAN, AGRA DWARA KARMKAAR SHRI MAANI ATMAJ SHRI DEEPAK KO DINANK 1.2.2002 SE SEWA SE PRITHAK KIYA JANA NYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAKDAAR HAI?"*

3. The case of the workman, Maani, in brief, is that he had been working with the ASI, Agra for last more than 15 years as Meson who was engaged in maintenance of monuments, which is perennial nature of work; and his services have been terminated by the management of ASI w.e.f. 01.02.2002 in illegal way without assigning any reason or charge sheet or retrenchment compensation; whereas he had become entitled for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. The workman has alleged that the management has engaged one Hukum Singh S/o Sri Vissa in his place and other hundreds of workmen. The workman has submitted that his name was at serial No. 68 of the seniority list and the management has terminated his services without following principle of 'first come last go'. The workman has submitted that a seniority list of daily wager is prepared by the management of ASI; but they manipulate the same and keep on engaging workers in an arbitrary manner and an FIR to the effect has been lodged for manipulation in the government documents against the management of ASI. The workman has alleged that he had become entitled for grant of temporary status by virtue of his long duration of services and he demanded accordingly, but, the management terminated his services w.e.f. 01.02.2002, instead of granting him temporary status. Accordingly, the workman has prayed for his reinstatement with consequential benefits, including back wages and temporary status.

4. The management of the ASI has opposed the claim of the workman by filing written statement wherein it has submitted that the present claim of the workman is not maintainable as the ASI does not come within the definition of 'Industry'. It has further submitted that the workman was engaged as casual labour as per availability of work, from March, 2001 to March, 2002 and has never worked for 240 days in any calendar year. The management has submitted

that the workman was never appointed on any post as such the question of his termination does not arise; since his engagement was dependent upon the highly intermittent casual nature of work and as soon as the job ended, he was no more engaged, therefore, such disengagement does not amount to termination so as to attract any provision of law. The management has also submitted that the workman was not declared as a temporary status worker as per Government order dated 10.09.93 as he did not work during the year preceding 10.09.1993. The management has further asserted that the seniority list submitted by the workman is old one and since the workman himself left the work on his own, therefore, he was discontinued from work and the list quoted by the workman should not be considered. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed rejoinder; wherein apart from reiterating its averments already made in the statement of claim, he has submitted that ASI is well covered under definition of 'industry' in view of the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case.

6. The parties filed documentary evidence in support of their respective pleadings. The workman has examined himself; whereas the management has examined Shri Munajjar Ali, Asstt. Conservator, to corroborate their case. The parties cross-examined each others' witnesses and availed opportunity to forward oral arguments. The parties were also granted opportunity to file written submission; whereupon the workman filed written submissions; whereas the management did not file any written submissions.

7. Heard arguments of the representatives of the both the parties and perused entire material available on file.

8. The authorized representative of the workman has submitted that the opposite party management, engages daily rated/casual employees for work of maintenance of monuments, which is a perennial nature of work; and the workman has been engaged as such by the opposite party management; who worked with the management for 15 long years; but his services have been terminated in utter disregard to the provisions contained in Section 25 G, without complying with the provisions of Section 25 F of the Act. He has further submitted that the management after terminating the services of the workman has engaged other workman in his place in violation to the provisions contained in Section 25 H of the Act. He has further argued that the ASI looks after maintenance of the monuments and raises money by charging money from the visitors/tourists in form of entry tickets and the same is being utilized in upkeep of the monuments, thus, it carries out commercial activity and comes within the purview of the triple test formulated by the Constitutional Bench of Hon'ble Supreme Court in *'Bangalore Water Supply and Seveage Board etc. vs. A. Rajappa and others etc. (1978) 2 SCC 213'*. The learned counsel has also submitted that the workman is also entitled for consideration for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993. He has relied upon:

*(i)* *Gopal Krishnaji Ketkar vs Mohamed Haji Latif & others AIR 1968 SC 1413.*

*(ii)* *Hon'ble High Court, Allahabad in WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another decided on 14.03.2019.*

*(iii)* *State vs. Harchad 2001 (90) FLR 744 (Raj)*

*(iv)* *Bank of Baroda vs Ghemarbhai Harjibhai Rabari 2005 (105) FLR 383 (SC).*

*(v)* *Harjinder Singh vs Punjab State Warehousing Corporation 2010 (2) LLN 14 (SC).*

*(vi)* *Samishta Dube, Appellant vs. City Board, Etawah & another, 1999 LAB. I.C. 1125 (SC).*

*(vii)* *Anavali Kshetirya Gramin Bank vs The Presiding Officer, Central Industrial Tribunal, Jaipur 7 others 2002 (930 FLR 79 (Raj).*

*(viii)* *Kuldeep Singh vs General Manager, Instrument Design Development & Facilities Centre & another (2011) 2 SCC (L&S) 524.*

*(ix)* *Sriram Industrial Enterprises Ltd. vs Mahak Singh & others (2007) 1 SCC (L&S) 961.*

*(x)* *Maharashtra State Road Transport Corporation & another vs Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 2 SCC (L&S) 513.*

11. In rebuttal, the authorized representative has argued that the establishment of ASI is not an 'industry' as it carries out sovereign function and further that the workmen concerned have never been appointed by the management of ASI rather work had been taken from them in peak season as and when required, thus, they never completed 240 days of continuous working and therefore, they were not entitled for the benefits of provisions contained in Section 25 F of the Act. It was further submitted that the maintenance of monuments is temporary and seasonal work is required and the same is not perennial in nature thus there is no need to appoint regular staff for carrying out such casual nature of work; moreover, it extends only so long as funds exist for maintenance. The learned counsel also submitted that the seniority list filed by the workman is of no avail being too old.

12. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and scanned entire evidence on record.

13 It is the case of the workman that he has been engaged by the opposite party ASI for last 15 years and had been terminated w.e.f. 01.02.2002 his services in violation to the provisions contained in Section 25 F & G; moreover, the management of ASI has engaged other new workman after disengaging him, in violation of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947. It has also been pleaded that the workmen were engaged for carrying out maintenance of monuments, which is a perennial nature of work; hence, the management ought to have re-engaged him on the basis of his seniority before engaging new workmen; but the management failed to do so. The workman has also stressed that the ASI is an 'industry' within the provisions of Section 2 (j) as it earns money by means of tickets from the visitors and tourists (Indians as well as foreigners). Likewise, it is also the case of the workman that the management did not consider his candidature for grant of temporary status in terms of OM No. 51016/2/90/EST.(C) dated 10.09.1993.

14. Per contra, the main contention of the opposite party is that the establishment of ASI is not an industry and the work carried out by the department does not come within the purview of commercial activity. Further, it has heavily relied on the fact that the workmen has not worked for 240 days continuously in any calander year and accordingly, compliance of provisions of Section 25 F was not necessary while terminating the services of the workman who was engaged casually as and when their services were required for maintaining the monuments.

15. After going through the rival contentions of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on verdict of Hon'ble Apex Court in *Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others* case (supra); wherein it has been observed that

***"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***

Hon'ble Apex Court has further observed that:

***"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."***

It is well known that the Archeological Survey of India is indulged in upkeep of the ancient monuments in order to preserve the cultural heritage of this country. For achieving this aim the ASI is being funded by the Government of India and it most of the times charges entry fee from the visitors, which is being utilized for the maintenance and upkeep of the monuments and its gardens etc. The workman has contended that the work carried out by the ASI is similar to CPWD and PWD, which are industry within the purview of the Act. Also, it has indicated that the nature of work carried out by ASI qualifies the triple test, formulated by Hon'ble Apex Court in *Bangalore Water Supply* case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the ASI is at par with the CPWD, PWD and other municipalities, which are covered under Industrial Dispute. Also, Hon'ble High Court, Allahabad in *WP. C No. 20486 of 2013 Union of India thru. Its Secrey. Culture & another vs Surendra Singh Rashtriya Adhayaksha INTUC & another* decided on 14.03.2019 has held that the ASI is industry within the definition of 'industry' as provided u/s 2 (j) of the Act.

Accordingly, in view of the discussions made hereinabove and law relied upon, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

16 It was the case of the workman that he had been working with the management of the ASI and his services have been retrenched by the management without any rhyme or reason in violation to the provisions contained in Section 25 F & G of the Act and also that after his illegal retrenchment the management has not bothered to re-engage him; rather the management has engaged other new workmen in violation to the provisions of Section 25 H of the I.D. Act, 1947. The workman in his evidence has stated on oath that the management has not re-engaged the retrenched workmen on the basis of their seniority but has engaged fresh workmen in his place viz. Hukum Singh. The workman stated in cross-examination that the employees engaged with him viz. Devi Singh, Om Prakash, Chito, Jagdish are still working and Jagdish and Chito, who were engaged after the workman, have been granted temporary status by the management of ASI. It has been further submitted that the Tribunal has directed the management to file muster rolls and seniority list to substantiate their version regarding continuous working; but the management neither filed the muster roll of concerned workmen nor the seniority list; nor let him or his authorized representative inspect the documents even after specific directions of the Tribunal in this regard. It is also relevant to mention that there is no cross-examination on the point. .

17. Per contra, the management's case is that the work performed by the workmen is not of perennial nature but intermittent and casual. The workmen were engaged as per need; and accordingly, the workmen never completed 240 days of working in any calendar year. In cross-examination the management witness accepted that the daily wagers are being engaged as per need for conservation of the monuments and they are accordingly, engaged on muster roll and they are being paid at the end of the month according to their working days. He further stated that no seniority list is being maintained in respect of daily wagers; however he admitted that paper No. 4/84 to 4/96, which is seniority list. He also admitted that his department could not file seniority list and muster roll in respect of workmen; however the same was made available to the workman for inspection. The management witness during cross-examination stated that the workman was not engaged after 01.02.2002 due to non-availability of work and since he was in category of casual labour, therefore, no compensation or notice was given to him on his removal. The management witness also stated that after February, 2002 the nature of work which was performed by the workman was taken by the department from other workmen.

18. The workman has submitted that he had prayed this Tribunal to summon the muster rolls from the management; and accordingly, the management was ordered to file muster rolls. In this regard the parties have allegation and counter allegations on each other; but the core issue is that when the management had been directed to file the muster rolls in respect of the workman then the management was duty bound to file the same and in absence thereof an adverse inference could easily be drawn against the management of ASI. Learned authorized representative of the management submits that the workman/his authorized representative never inspected the record in the management's office, while refuting it the learned authorized representative for the workman alleged that the relevant records were never made available for inspection, neither produced before the Court.

The management witness has shown his inability of having any knowledge about any seniority list of the casual workers; but in the compliance of provisions contained in Section 25 G & H of the Industrial Disputes Act, 1947 the same was required to be maintained by the management. Hence, in view of above, it is unbelievable that the management did not maintain any seniority list in respect of casual/daily labourers and it is relevant to note that the management did not file such seniority list with a view to defeat the claim of the workman.

19. Admittedly, the workmen were engaged to carry out casual nature of work on daily wage basis on muster roll, this fact has been admitted by the management in its written statement; while it has simultaneously denied the continuous engagement of the workman; but its denial is not specific as it was required to come forward with the details of the working days. The management has submitted that the burden of proof that the claimant was in employment of the management primarily lies on workman who claims to be a workman by producing vouchers of payment of salary etc.

20. The workman has come forward with a case that the workman was engaged for 15 years and had been terminated illegally w.e.f. 01.02.2002 and after his retrenchment the management did not bother to re-engage him though it engaged other fresh faces. The workman in order to substantiate its contention, summoned the details from the management; but it failed to file the same.

Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Hence, in view of above case law, an adverse inference can easily be drawn against the management. The management ought to have come forward with specific case as to when the workmen worked with it, with substantial proof thereof.

21. The provisions contained in Section 25 H of the Industrial Disputes Act, 1947 read as under:

> ***25 H. – Re-employment of retrenched workmen. – Where any workmen are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."***

A bare perusal of the above section indicates that the said Section provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons. Rule 77 and 78 of the Industrial Deputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated, arranged according to seniority of their services in that category and publication of that list. Rule 78 prescribes the mode of reemployment of retrenched workmen. The requirement of Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated, arranged according to the seniority of their service. The category of workmen to whom section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list, Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling in the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of section 25 F are entitled to be placed higher than those who do not fall in that category. No doubt, it is true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25 H to the other retrenched workmen not covered by section 25-F does not, in any manner, prejudice those covered by section 25-F because the question of consideration of any retrenched workman not covered by section 25 F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in section 25-H because of Rules 77 and 78, even assuming the Rules framed under the Act could have that effect.

The distinction between section 25-F and 25-G of the Act was elaborated in *Bhogpur Co-op. Sugar Mills Ltd. v. Harmesh Kumar 2006 (111) FLR 1202 (SC)*, in the following words:

> ***"We are not oblivious of the distinction in regard to the legality or the order of termination in a case where section 25 F thereof applies on the other. Whereas in a case where section 25 F of the Act applies the workman is bound to prove that he had been in continues service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions or sections 25-G and 25-H thereof he may not have to establish the said fact.***

Hon'ble Rajasthan High Court in *State vs. Harchad 2011 (90) 744* has observed as under:

> ***"5. In Samistha Dube v. City Board, Itava, the Hon'ble Supreme Court has held that even if the provision of Section 25 (F) had not been violated and the workman had not completed 240 days in a calendar year counting backward from the date of termination and there is a violation of the provisions of Section 25 (G) or 25 (h), the termination becomes bad. More so, in Vikaramaditya Pande v. State of U.P., the Apex Court has held that in case the retrenchment/termination wages with continuity of service unless employer satisfied the labour court that he had gainfully been employed somewhere else. However, in the facts and circumstances of the case, the court can award a lesser amount for back-wages."***

Further, Hon'ble Rajasthan High Court in *Anavali Kshetrya Gramin Bank vs. the Presiding Officer, Central Industrial Tribunal, Jaipur & others 2002 (93) FLR 79* held that:

> ***"In the case of Oriental Bank of Commerce v. Presiding Officer, Central government Industrial Tribunal and another, it was held that Sections 25-G and 25H are totally independent provisions though both of them deal with the retrenchment. Section 25G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of last come first go in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25G and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be one the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."***

22. Admittedly, the management of ASI engaged the workman to take his services for maintenance of monuments, which is perennial in nature. This fact is corroborated by their own witness who stated that upkeep and maintenance of the monuments is being done by engaging the labourers on daily wage basis on muster roll and he further stated that the workman was not engaged after 01.02.2002 due to non-availability of work and since he was in category of casual labour, therefore, no compensation or notice was given to him on his removal. The management witness also stated that after February, 2002 the nature of work which was performed by the workman was taken by the department. Then management cannot say that they engaged the workmen as per availability of work on casual basis. Further, even if the argument of the management is accepted that the workman had been terminated on non-availability of work and he was not entitled for benefits of Section 25 F, even then as per provisions contained in Section 25 H of the I.D. Act, 1947 and Rule 78 of the I.D. Act, 1957, on re-availability of work, the management ought to have re-engaged those workmen who had already worked with it as required by the section 25 H of the Industrial Disputes Act, 1947.

There is no iota of evidence from the management regarding this fact that the workman was not covered by the provisions of Section 25 F and the burden to prove that the workman did not work for 240 days in the year concerned was on the management, particularly when the workman summoned the muster roll and the management did not file muster roll; rather it chose to get inspection of some muster rolls. Hon'ble Gujrat High Court in *Director, Fisheries*

*Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Thus, in view of the principles propounded by Hon'ble Apex Court and Hon'ble High Court in the aforesaid citations, the management failed to prove that the workman was not entitled for protection of Section 25 F; and also that it has endeavoured sincerely to re-engage those workmen who were retrenched due to non-availability of work as envisaged by the Rule 78 of the I.D. Act (Central), 1957.

23. The case of the workman is that he was retrenched and thereafter was not re-engaged whereas other new faces were introduced into the management to carry out the same work. The management witness has shown his inability to certify this fact; but even then this could not be easily accepted that all those new workmen, whose names have been taken by the workman during his examination/cross-examination were not engaged, particularly in the absence of any evidence in rebuttal by the management. The management has focused its defence on the issue that the workman did not complete 240 days working to get the benefits of section 25 F; but the case of the workman is entirely different, which indicates that the management, by not re-engaging the workman on availability of work and engaging new faces, violated the provisions contained in Section 25 H and for attracting the provisions of section 25 H the workman need not establish that he had been in continuous service of 240 days during twelve months preceding the order of termination. Thus, the management utterly failed to defend the case on proper lines by not producing any evidence with regard to the fact that it made efforts to re-engage the previously retrenched workmen first and on their not turning up, it went for to engage the new faces. On the contrary the management witness in his cross-examination stated that the nature of work performed by the workman, had been taken later on by the other workmen.

24. Thus, in view of the discussions made above, I am of the considered opinion that the management of ASI did not comply with the provisions of Section 25 H of the I.D. Act, 1947 by not re-engaging the workman after his retrenchment and employing new workmen. Hence, I come to the conclusion that the action of the management of the ASI, Agra in not re-engaging the workman after his retrenchment was unjustified and resultantly, the workman is entitled for reinstatement. As regard entitlement of back wages, it is admitted that he was engaged as daily wager and was working as such i.e. he was not regular employee, therefore, he has no right for back wages etc. in view of Rule 'no work no pay'; but he shall be entitled for continuity of service and other consequential benefits, as per Rules. Further, the management is directed to consider the claim of the workman for grant of temporary status etc. in terms of provisions contained in the OM No. 51016/2/90/EST.(C) dated 10.09.1993.

25. Award as above.

LUCKNOW

29th August, 2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का. आ. 1758.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय विमानपत्तन प्राधिकरण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 87/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.09.2019 को प्राप्त हुआ था।

[सं. एल-11011/7/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1758.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 19.09.2019.

[No. L-11011/7/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, NEW DELHI**

**ID No. 87/2015**

Shri Manoj Kumar and
Shri Kuldeep Singh,
Working as driver (MT) in Airport Authority of India,
As represented by
Delhi Labour Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi-54. …Workmen

**Versus**

The Airport Authority of India,
Through its Chairman,
Rajiv Gandhi Bhawan,
3rd Floor, C-Block,
Safdarjang Airport,
New Delhi 110003. … Management

**AWARD**

This award shall decide a reference which was made to this Tribunal by the Appropriate Government vide letter No.L-11011/7/2014-IR(M) dated 18.02.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether non regularization of Shri Manoj Kumar and Shri Kuldeep Singh by the Airport Authority of India on its own roll as driver w.e.f. 4/7/2008 respectively is just, fair and legal ? If not, What relief the workman concerned are entitled to ?'

2. Both parties were put to notice and the claimant filed statement of claim, with the averments inter-alia that they had joined into the employment of Management w.e.f. 4/7/2008 and 8/4/2010. They were taken in job on contract basis and was posted as driver at Safdarjang Airport. They were continuously and uninterruptedly discharging their service to the entire satisfaction of their superiors but the Management took any step regarding regularization of their services. Action of the Management regarding non regularization of the workmen and non payment of salary in proper pay scale alongwith arrears on the principle of "Equal Pay for Equal Work" is totally illegal, unjust, malafide and amounts to unfair labour practice under Section 2(ra) of the Act because the job of driver is of a permanent and regular nature of job and they are performing the same work as being done by their regular counterparts; the workmen after completing 90 days of continuous employment have acquired status of permanent employee as provide in Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946; though the workman were taken in job through contractor but the contract was merely a camaflouge and basically it is the Management who is taking services from the workmen and the officials of the Management itself are supervising the duties rendered by the workmen concerned. Demand notice dated 17/12/2012 was served upon the Management but to no response. Thereafter conciliation proceedings were got initiated but to no avail due to adamant and non cooperative attitude of the Management. Prayer has been made that Management be directed to regularize the services of the workmen on the post of driver with retrospective effect i.e.from the initial date of their joining in the proper pay scale and allowances and to pay them entire difference of salary on the principle of "Equal Pay for Equal Work" and all arrears thereof.

2- The statement of claim has been resisted by the Management No.1 who filed written statement and took preliminary objections inter alia that there is no employer-employee between the workman/claimant and the Management inasmuch as the workman was neither appointed by the Management, nor was its direct employee. It is alleged that the

Management had engaged the services of the contractor M/s Good Housekeeping, WZ-519, Raj Nagar-I, Palam Colony, New Delhi through agreement. It is also alleged that the claim petition is not maintainable as the claimant has failed to implead the contractor M/s Good Housekeeping. The workman was engaged by the contractor for his services, if any and salary of the workman was paid by the contractor M/s Good Housekeeping. As such, contractor/s were solely responsible for employment of the workman, payment of their wages and other service benefits. It is stated that the workmen/claimant never attained the status of permanent employee and as such they are not entitled to regularization because there was no employer-employee relationship between the Management and claimants. Prayer has been made that claim petition is not maintainable and as such the claimants are not entitled to any relief.

3- Management No.2 M/s Good Housekeeping despite service of notice neither caused appearance, nor filed written statement and hence the matter was proceeded ex parte against it vide order dated 29/10/2015.

3- The claimant filed rejoinder to the written statement of Management No.1 and reiterated their own case as set up in the claim petition. They denied the allegations as made in the written statement. It has been alleged that it was the Management of Airport Authority of India only who was supervising the services rendered by the claimant. Even otherwise the Management is a principal employer and the termination of the claimant is an act of victimization of the workman/claimant.

4- On the pleadings of the parties, following issues were framed on 13/5/2016 :-

1) Whether the reference is not legally maintainable in view of the preliminary objections ??

2) As in terms of reference i.e. Whether non regularization of Shri Manoj Kumar and Shri Kuldeep Singh by the Airport Authority of India on its own roll as driver w.e.f. 4/7/2008 respectively is just, fair and legal ? If not, What relief the workman concerned are entitled to ?

3) Relief.

5- The workmen /claimants examined themselves as WW1 and WW2. They filed their evidence by way of affidavits Ex.WW1/A & Ex.WW2/A. They relied on documents Ex.WW1/1 to Ex.WW1/10 as well as documents Ex.WW2/1 to Ex.WW2/9. They also examined Shri Surender Bhardwaj, General Secretary of Delhi Labour Union as WW3 who tendered his affidavit Ex.WW3/A and proved copy of the resolution of the Union, as Ex.WW1/4 regarding espousing the cause of the workmen. On the other hand, the Management examined one Shri Dinesh Chander Pokhriyal, Manager (Tech.) as MW1 who filed his affidavit Ex.MW1/A and relied on documents Ex.MW1/A.

6- I have heard Shri Rajeev Aggarwal, A/R for the claimant and Shri Sunil Dutt, A/R of the Management and have also gone through the records carefully. My findings on above issues are as follows.

**Issue No.1:-**

7- At the outset I may mention that claim of the workman/claimant is that he was working on contract basis under Airport Authority of India, whereas it was submitted on behalf of the Management that the claimant/workman was/is in fact employee of M/s Good Housekeeping and as such there does not exist any relationship of employer-employee between the Management and claimant herein.

8- During the course of arguments, learned A/R appearing for the Management strenuously argued that there does not exist relationship of employer-employee between the Management No.1 and the claimants, because Management No.1 never appointed or engaged the claimants. On the strength of document Ex.WW1/7 he submitted that in fact the claimants were employees of M/s Good Housekeeping Services in whose favour the Management No.1 had issued contract Ex.MW1/1 for supply of skilled persons. As such, the claim petition against Management No.1 is not at all maintainable.

9- Per contra, learned A/R appearing for the claimants submitted that the claimants are the employees of the Management no.1 and they were plying the vehicles of the Management No.1. Control and supervision over the work of the claimants was that of the Management No.1 and even the claimants were paid over time allowances by the Management No.1 which fact is reflected from the documents Ex.WW1/10 and Ex.WW2/9. He also argued that even if there was any contract between the Management NO.1 and contractor M/s Good Housekeeping, the same was sham and bogus because the claimant continued to work with the Management No.1 despite the fact that contractor kept on changing from time to time. It was submitted that there existed relationship of employees and employer between the claimants and Management No.1 herein.

10- To decide the rival contentions of the parties, it would be worthwhile to refer to the oral as well as documentary evidence adduced on record. I may mention that testimony of the claimants/workmen is in line with the averments made in the claim petition. They have filed on record various documents viz. copy of legal demand notice dated 17/12/2012 as Ex.WW1/1 and its postal receipt as Ex.WW1/2; statement of claim filed before ALC as Ex.WW1/3; espousal certificate as Ex.WW1/4; copy of the letters/replies dated 3/7/2014 & 18/7/2013 which the Management No.1 had sent to the ALC

as Ex.WW1/5 & Ex.WW1/6 respectively; copy of the reply dt.14/8/2013 which was purportedly sent on behalf of M/s. Good House keeping to ALC as Ex.WW1/7; rejoinder filed by the workmen as Ex.WW1/8; Entry permit Card issued by the Management in favour of claimant Manoj Kumar as Ex.WW1/9; copies of statements showing Overtime Allowance payable/paid to the claimant pertaining to the period January, 2011 to October, 2012 as Ex.WW1/20- (colly.- 19 pages). The workman Kuldeep Singh filed on record copy of the entry permit card issued in his favour by the Management No.1 as Ex.WW2/1; casual entry permit/visitor slips dated 22/6/2011 and 8/11/2011 issued to him by Lok Sabha Secretariat as Ex.WW2/2 & Ex.WW2/3; entry permit card issued by Management NO.1 as Ex.WW2/4; copy of application form submitted by the claimant (duly recommended by General Manager of Airport Authority of India to the Ministry of Home Affairs, for issuance of temporary pass as Ex.WW2/5; copies of office notes/requisition issued by Office of Joint Secretary (P), Ministry of Civil Avitiation to G.M.Equpment, AAI as Ex.WW2/6 and Ex.WW2/7 for providing/issuance of seat covers and one set of seat towels as well as one perfume bottle to Shri Kuldeep Singh – staff car driver of vehicle No.DL-3C-AY-3601; copy of certificate issued by Joint Secretary to the Ministry of Civil Aviation, about the work and conduct of the claimant as Ex.WW2/8; statements/claims of Overtime Allowance payable to the claimant pertaining to the period January, 2011 to October, 2012 as Ex.WW2/9 (colly.).

11- MW1 – Shri Dinesh Chand Pokhriyal in his testimony has deposed that there is no employer-employee relationship between the claimant and Management as the workman was never appointed by the Management and was never the direct employee of Airport Authority of India. This witness filed on record copy of the award )dated 16/6/2008) issued by the Management No.1 in favour of M/s Good House Keeping, New Delhi for providing **skilled persons (05 Nos. of MTD personnel) for driving duty on annual basis** during the period from 18/6/2008 to 17/5/2009, as Ex.,MW1/1.

12- At the outset I may mention that the document Ex.MW1/1 is a copy of contract between Management No.1 and M/s Good House Keeping for supply of 5 Nos. of skilled personnel (drivers) and the said contract is for one year from 18/6/2008 to 17/5/2009. There is nothing on record to suggest that the said contract was renewed from time to time in favour of the said contractor. Furthermore, on the basis of this contract Ex.MW1/1, it cannot be inferred that the claimants were appointed or engaged by M/s Good House Keeping, New Delhi. Although in the reply Ex.WW1/7 sent by M/s Good Housekeeping to ALC, it has been stated that Shri Kuldeep Singh was working as driver and all of a sudden, he stopped coming for duty & had left the work at his own will and in October, 2013 he had submitted his Provident Fund withdrawal form and claimed the withdrawal, however it is clear from the recital of the said reply as to when the claimant Kuldeep Singh was engaged by Good Housing Keeping and as to when he had left the work/job. Moreover, the Management No.1 has not examined any official from Good House Keeping to prove the factum of employment and duration of employment of Mr. Kuldeep Singh or to prove his deployment at their instance with Management No.1. On the contrary, documents Ex.WW1/9, Ex.WW1/10; WW2/1 to Ex.WW2/9 support the version of the claimants that they were working under the control and supervision of Management No.1 and had claimed over time allowance as per statement Ex.WW1/10 and Ex.WW2/9 (colly.) .

13- Even if it is admitted that the claimants were working with the Management/Airport Authority through M/s Good House Keeping to whom contract/s were awarded, in that eventuality also, control and supervision over the work of the claimant/workman herein was that of the principal employer Airport Authority of India. Moreover, it is apparent from documents Ex.,MW1/1 to Ex.MW1/15 that the workers including the claimant were hired by Airport Authority of India through the contractor M/s Good Housekeeping for plying its vehicles. There is nothing on record to suggest that the Management had awarded contract to M/s Good Housekeeping for completion of any project or that the said contractor himself was the transporter and he provided the Management Airport Authority of India the vehicles alongwith the driver/s.

14- It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

15- Constitution Bench of Hon'ble Supreme Court in the celebrated case of **Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1** noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

"107. An analysis of the cases, discussed above, shows that they fall in three classes :

(i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1)

of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

16- In the case of **Management of Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013)**, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel ) and the workmen.

17- I may mention that situation in the instant case is not distinct. It is evident from the evidence adduced on record that the contract awarded to M/s Good House Keeping was for supply of workforce/manpower to the Management Airport Authority of India for plying the cars owned/belonging to the Management. Even control and supervision over the work of the claimant/workman was that of the Management. The job of driver/s is delicate. MW1 Shri Dinesh Chander Pokhriyal has admitted that the workman Manoj Kumar and Kuldeep Singh worked under the Management w.e.f. 4/7/2008 and 8/4/2010 respectively till March, 2013 continuously as drivers. He also admitted that job of driver on which the claimants were working is of perennial and regular nature. He further admitted that attendance of the workman used to be marked in the Attendance register. There is no document on record to show that the claimants were employed by any third agency/contractor or that they were not employed by the Management.

18- Except for the bald statement that the claimants are/were the workers of the contactor, the Management has not filed on record any document to rebut the contention of the claimants that they were engaged by the Management No.1. The Management No.1 has not filed on record copy of any of the letter or agreement/ contract to show that contract Ex.MW1/1 which was valid for one year till 17/5/2009, was renewed from from time to time. Even otherwise the said contract/agreement was not for completion of any project rather was for supply of manpower. The claimants/workmen continued to work under the Management No.1 even after 17/5/2019 which fact is so apparent from the documents Ex.WW1/10 and Ex.WW2/1 to Ex.WW2/9 which pertain to the year 2011-12.

All these circumstances lead me to draw an inference against the Management No.1 that the contract/agreements issued by the Management No.1 in favour of M/s Good Housekeeping for supply of manpower was sham and camouflage and that there existed relationship of employer-employees between the Management No.1 and the claimants herein. This issue is decided accordingly in favour of the claimants.

**Issue No.2 :-**

19- Now, a short question/issue arises for consideration is as to whether the workmen/claimants who are working with the Management are entitled to be regularized to the posts of driver.

20- Ld. A/R for the claimants argued that the Management/s by adopting unfair labour practice, are depriving the claimants their legitimate right of equal pay for equal work, in the regular pay scale despite the fact that they are working under the control and supervision of the Management No.1. He also argued that the workmen/claimants are entitled to be regularized from the date of their initial appointment.

21- Per contra, learned A/R appearing for the Management strenuously argued that the claimants being contractual employees has neither got any right to get wages/salary at par with their regular counterparts, appointed on permanent basis, nor has got any right to be regularized in service. He relied on the judgements in the case of **State of Karnataka Vs. Uma Devi 2006 (4) SCC 1** to buttress his submission that casual workers/ contractual labour has got no right to be regularized.

22- There is no dispute about preposition of law that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

23- Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

24- Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E.Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1** and of Delhi High Court in the case of **Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018**, has observed in para 27 and 29 as under :-

> 27. "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. **Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."**
>
> **…….**
>
> **29. Thus,** in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umrala Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived. **In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order, directing the petitioner to regularize the respondents' services……"**

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & unless **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.**

25- To decide the issue in proper perspective, it would be worthwhile to refer the oral as well as documentary evidence adduced on record. While deciding issue No.1 this Tribunal has already held that there existed relationship of employee-employer between the claimants and the Management No.1 and that the contract/agreement if any between the Management No.1 and the contractor M/s Good House Keeping was sham and camouflage. MW1 in his cross examination has admitted that the workman Manoj Kumar and Kuldeep Singh worked under the Management w.e.f. 4/7/2008 & 8/4/2010 respectively till March, 2013 continuously as drivers. He also admitted that job of driver to which the claimants were working is of perennial and regular nature and that the Management is having regular & permanent drivers on its roll & they are paid in regular pay scale with all attendant benefits. He further admitted that nature of work

& working hours of the workmen and their counterparts who are working as regular drivers and are paid salary in regular pay scale, are one and the same.

26- It is manifest from the pleadings of the parties and evidence adduced on record that the claimants/workmen herein were engaged by the Management. The posts to which the claimants/workmen are working are of regular and perennial nature, which fact is admitted to by MW1 – witness of the Management. It clearly emerges from record that the claimants/workman were paid consolidated wages/salary and not the regular pay-scale, despite the fact that nature of work & working hours of the claimants and their counterparts who are regular employees and are paid salary in regular pay-scale, is same and identical. The workmen herein also fulfill the requisite qualifications. This clearly goes to show that the Management has deprived the workmen the status & privilege of permanent/regular employee, as the workmen/claimants working as drivers are getting lesser wages/salary than the wages/salary being paid to their regular counterparts. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving them of the status & privileges of permanent workman **amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act. I**t emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed. It is well settled in law that once the workmen/claimants are doing same duties and responsibilities as are being performed by regular employees of the Management, **they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work".**

27- Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "**The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).** It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.''

28- In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimants Manoj Kumar and Kuldeep Singh are entitled to get wages/salary in the regular pay-scale of driver/s, alongwith all consequential benefits from the initial date of their engagement.

29- As regards regularization of services of the workmen/claimant, ithas come on record that the workmen/claimants have been performing the job of driver for the last many years. The posts to which the claimants/workmen are working is of regular and perennial nature. As such, this Tribunal considers it expedient in the interest of justice to direct the Management to issue orders regarding regularization of the services of claimants/workmen from the initial date of their appointment, against vacant/sanctioned posts of driver, within a period of three months from the date of publication of the Award.

Award is passed accordingly in favour of the claimants and against the Management. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 09.09.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का. आ. 1759.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एम०पी० स्टेट माइनिंग कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 132/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल-29012/9/1996-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1759.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 132/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Limited and their workman, which was received by the Central Government on 18.09.2019.

[No. L-29012/9/1996-IR(M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/132/96**

Branch Secretary,
MP State Mining Corporation Karmchari Sangh,
Nayapara, Jagdalpur …Workman/Union

**Versus**

Managing Director,
MP State Mining Corporation Ltd.,
E-5/14, Arera Colony,
Ravindra Nagar,
Bhopal. …Management

**AWARD**

**Passed on this 30th day of July 2019**

1. As per letter dated 31-5-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, hereinafter referred to by word 'Act'1947 as per Notification No.L-29012/9/96-IR(Misc). The dispute under reference relates to:

> "**Whether the action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Jagdish Prasad Srivastava, Ex-Chowkidar is justified? If not, to what relief is he entitled to?"**

2. After receiving reference, notices were issued to the parties. On behalf of Ist party workman statement of claim is submitted by Secretary, MP State Mining Corporation. Case of workman is that he was appointed as watchman as per order dated 1-7-85 at Jagdalpur Office of IInd party Corporation. That co-employees working with him were regularized and made permanent by the corporation. Ist party workman was picked out and his services were put to end. It is further submitted that workman was suspended on vague allegation that there was shortage of tin ore of Pushpal camp. The suspension order was silent who were responsible for the alleged shortage and how workman was responsible for it. Officer incharge Shri Sanju was suspended. DE was held against him. Workman was exonerated from all charges. His suspension was revoked. Workman was suspended as per order dated 12-4-89. No charge sheet was issued to him. Any enquiry was not conducted against him. vide order dated 19-5-89, he was reinstated in service.

3. Workman submits that his service record was unblemished. There was no complaint against him. any enquiry was not conducted about misconduct on his part. His services were discontinued from 25-5-89 just after six days of his reinstatement. He was removed from service. That no watchman is available in office at Jagdalpur where workman was posted. The post is vacant. His appointment was on regular basis. It is submitted that retrenchment of workman is unwarranted when post of waterman was lying vacant. The services of workman could not be discontinued unless any misconduct is committed by him proved in the enquiry. The order of removal of workman is high hands. Higher authorities are playing with his career. Action of IInd party is illegal, arbitrary. Notice of retrenchment was not issued to him. he was not paid retrenchment compensation or pay in lieu of notice . that junior employees are regularized and his services are discontinued illegally. On such ground, it is prayed that workman be reinstated with back wages.

4. In its written statement of defense dated 15-10-07, the management Ist party i.e. MP State Mining Corporation, Bhopal simply stated that at the relevant time, the concerned workman was working at Jagdalpur office of the corporation which after bifurcation of the State comes under State of Chhattisgarh, MP State Mining Corporation has

also been bifurcated and Jagdalpur office of MP State Mining Corporation is now under Chhattisgarh Mineral Development Corporation. The workman can claim relief only from Chhattisgarh Mineral Development Corporation.

5. As the record reveals vide order dated 17-1-11 passed by my learned predecessor, management party No.1 MP State Mining corporation was directed to file complete address of Chhattisgarh Mineral Development Corporation and thereafter notices were ordered to be sent to the Chhattisgarh Mineral Development Corporation, hereinafter referred to by word 'Chhattisgarh Corporation'. Record further reveals that notices were sent by registered post under the order dated 17-5-05 on 11-6-2012 which were served and since none was present from Chhattisgarh Corporation, the case was ordered to be proceeded exparte against Chhattisgarh Corporation. The MP State Mining Corporation continued to take part in the proceedings as it appears from record they have cross examined the workman witness. They did not file any evidence. Chhattisgarh Corporation never appeared in the case inspite of notice as has been mentioned earlier.

6. At the stage of evidence, the workman examined himself on oath and has filed and proved documents Exhibit W-1 Seniority list, W-2 suspension order, W-3 reinstatement order, W-4 termination order ( all photocopies).

7. No evidence was given by MP State Mining Corporation and Chhattisgarh Mineral Development Corporation. It has also been mentioned earlier that Chhattisgarh Mineral Development Corporation never appeared in this case inspite of service of registered notice and case has proceeded exparte against Chhattisgarh Mineral Development Corporation. Award dated 29-1-2015 was passed by my learned predecessor on the basis of evidence as follows:-

**The action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Jagdish Prasad Srivastava, Ex-Chowkidar is illegal.**

**IInd party No.2 Chhattisgarh Mineral Development Corporation is directed to reinstate workman with continuity of service and 40 % back wages.**

8. It further comes out from record that Chhattisgarh Corporation filed a writ petition No. 153/2016 before Hon'ble high Court, Chhattisgarh, Bilaspur which was decided by Single bench of Hon'ble high Court, Chhattisgarh vide order dated 9-10-2017. Hon'ble High Court set aside the award only w.r.t. Chhattisgarh Corporation and maintained it w.r.t. MP State Mining Corporation with a direction that the matter be remitted to the Tribunal again for hearing and parties were directed to appear before this Tribunal on 30-11-2017. This order of Hon'ble High Court was received by Tribunal and as per order dated 15-1-2018 passed by my learned predecessor, matter was taken again. None of the parties appeared before the Tribunal on the date fixed by Hon'ble high Court Chhattisgarh. Hence notices were ordered to be issued to the workman and Chhattisgarh Mineral Development Corporation by my learned predecessor. The workman side appeared in response to the notice but none appeared for Chhattisgarh Mineral Development Corporation. Hence on 10-6-2019, keeping in view that inspite of clear direction of Hon'ble High Court, the Chhattisgarh Corporation did not appear before this Tribunal on the date fixed by the Hon'ble High Court as directed by Hon'ble High Court and also that they did not appear inspite of notices sent. They did not even file any statement of defense or any evidence in support of their case. Date 9-7-2019 was fixed for final argument. The Chhattisgarh Corporation was still given liberty to put its presence till or before date fixed following which the case to still proceed exparte against Chhattisgarh Corporation. On 9-7-2019 also, none appeared on behalf of Chhattisgarh Mineral Development Corporation. Hence the case has proceeded again exparte against Chhattisgarh Mineral Development Corporation and arguments of learned counsel of workman Shri A.K.Shashi were heard.

9. Following issues were framed by my learned predecessor in the award in this case which is affirmed by the High Court:-

**(1) Whether the action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Jagdish Prasad Srivastava, Ex-Chowkidar is justified?**

**(2) If not to what relief the workman is entitled for?**

10. **Issue No. 1**-

Workman has stated that he was appointed as watchman at Jagdalpur office as per order dated 1-7-85 Exhibit W-1. He was terminated from service without issuing chargesheet or conducting enquiry. No notice was issued to him. his services were terminated within six months of his reinstatement revoking order of his suspension. His services were discontinued on ground that his services were not required. Workman has produced documents Exhibit W-1 to W-4. In his cross-examination, workman says he was working as watchman at Village Pushpal. He was not doing digging work. In the year 2000, MP State was bifurcated and new state of Chhattisgarh was established. At the same time Chhattisgarh Corporation was established. He was working in Chhattisgarh **Mineral Development** Corporation. IInd party did not participate in reference proceeding. Workman was not cross-examined. Management has not adduced any evidence.

11. Copy of Madhya Pradesh Re-organization Act 2000 is produced at Exhibit W-5.

Section 82 of Madhya Pradesh Re-organization Act 2000 provides- where immediately before the appointed day, the existing State of Madhya Pradesh is a party to any legal proceedings w.r.t. any property, rights or liabilities subject to apportionment between the states of Madhya Pradesh and Chhattisgarh under this Act, the State, of Madhya Pradesh or Chhattisgarh which succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Madhya Pradesh or added as a party to those proceedings and the proceedings may continue accordingly.

In present case, notice was issued to Chhattisgarh Corporation. However it failed to appear and he has been proceeded exparte. Chhattisgarh Corporation failed to participate in reference proceeding. I find no reason to disbelieve unchallenged evidence of workman. his services are terminated without notice, without issuing chargesheet. Therefore I record my finding in Point No.1 in Negative.

12. **Issue No. 2**-

In view of finding in issue No.1 termination of services of workman is illegal, question arises whether he is entitled to reinstatement with backwages. The unchallenged evidence of workman is his services are terminated and employees junior to him are continued in service. His affidavit is silent about his gainful employment. Considering above aspects, termination from service as per order dated 25-5-89, workman cannot be allowed full backwages. In my considered view, reinstatement of workman with 40 % backwages would be appropriate.Issue no 2 is answered accordingly.

In the result, award is passed as under:-

**(1) The action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Jagdish Prasad Srivastava, Ex-Chowkidar is illegal.**

**(2) IInd party No.2 Chhattisgarh Mineral Development Corporation is directed to reinstate workman with continuity of service and 40 % back wages.**

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का. आ. 1760.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एम. पी. स्टेट माइनिंग कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 133/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुआ था।

[सं. एल-29012/8/1996-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1760.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Limited and their workman, which was received by the Central Government on 18.09.2019.

[No. L-29012/8/1996-IR(M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

**NO. CGIT/LC/R/133/96**

Branch Secretary,
MPState Mining Corporation Karmchari Sangh,
Nayapara, Jagdalpur …Workman/Union

**Versus**

Managing Director,
MP State Mining Corporation Ltd.,
E-5/14, Arera Colony,
Ravindra Nagar,
Bhopal.

…Management

**AWARD**

Passed on this 30th day of July 2019

1. As per letter dated 31-5-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/8/96-IR(Misc). The dispute under reference relates to:

> "Whether the action of the management of M.P. State Mining Corporation Ltd., Bhopal in terminating the services of Shri Devendra Pratap Bahadur Singh, Ex-Supervisor is justified? If not, to what relief is he entitled to?"

2. After receiving reference, notices were issued to the parties. On behalf of Ist party workman statement of claim is submitted by Secretary, MP State Mining Corporation at page 2/1 to 2/5. Case of workman is that he was appointed as watchman as per order dated 1-11-85 at Jagdalpur Office of IInd party Corporation. That co-employees working with him were regularized and made permanent by the corporation. Ist party workman was picked out and his services were put to end. It is further submitted that workman was suspended on vague allegation that there was shortage of tin ore of Pushpal camp. The suspension order was silent who were responsible for the alleged shortage and how workman was responsible for it. Officer incharge Shri Sanju was suspended. DE was held against him. officer was exonerated with all charges. His suspension was revoked. Workman was suspended as per order dated 12-4-89. No chargesheet was issued to him. Any enquiry was not conducted against him. vide order dated 19-5-89, he was reinstated in service.

3. Workman submits that his service record was unblemished. There was no complaint against him. any enquiry was not conducted about misconduct on his part. His services were discontinued from 25-5-89 just after six days of his reinstatement. He was removed from service. That no watchman is available in office at Jagdalpur where workman was posted. The post is vacant. His appointment was on regular basis. It is submitted that retrenchment of workman is unwarranted when post of waterman was lying vacant. The services of workman could not be discontinued unless any misconduct is committed by him proved in the enquiry. The order of removal of workman is high hands. Higher authorities are playing with his career. Action of IInd party is illegal, arbitrary. Notice of retrenchment was not issued to him. he was not paid retrenchment compensation or pay in lieu of notice . that junior employees are regularized and his services are discontinued illegally. On such ground, it is prayed that workman be reinstated with back wages.

4. Application for impleading Chhattisgarh Mineral Development Corporation was submitted on 9-5-05 by counsel for management. it appears said application was rejected. Written Statement filed by IInd party at Page 15 is devoted on the point that Ist party workman was working at Jagdalpur office of MP State Mining Corporation. After bifurcation of State, the area covers under State of Chhattisgarh. MP State Mining corporation is bifurcated. Area comes under Chhattisgarh Mineral Development Corporation. Workman can pray relief from Chhattisgarh Mineral Development Corporation.

5. As the record reveals vide order dated 17-1-11 passed by my learned predecessor, management party No.1 MP State Mining corporation was directed to file complete address of Chhattisgarh Mineral Development Corporation and thereafter notices were ordered to be sent to the Chhattisgarh Mineral Development Corporation. Record further reveals that notices were sent by registered post under the order dated 17-5-05 on 11-6-2012 which were served and since none was present from Chhattisgarh Mineral Corporation, the case was ordered to be proceeded exparte against Chhattisgarh Mineral Corporation. The MP State Mining Corporation continued to take part in the proceedings as it appears from record they have cross examined the workman witness. They did not file any evidence. Chhattisgarh Mineral Corporation never appeared in the case inspite of notice as has been mentioned earlier.

6. At the stage of evidence, the workman examined himself on oath and has filed and proved documents Exhibit W-1 Seniority list, W-2 suspension order, W-3 reinstatement order, W-4 termination order ( all photocopies).

7. No evidence was given by MP State Mining Corporation and Chhattisgarh Mineral Development Corporation. It has also been mentioned earlier that Chhattisgarh Mineral Development Corporation never appeared in this case inspite of service of registered notice and case has proceeded exparte against Chhattisgarh Mineral Development Corporation. Award dated 29-1-2015 was passed by my learned predecessor on the basis of evidence as follows:-

> The action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Devendra Pratap Bahadur Singh, Ex-Supervisor is illegal.
>
> IInd party No.2 Chhattisgarh Mineral Development Corporation is directed to reinstate workman with continuity of service and 40 % back wages.

8. It further comes out from record that Chhattisgarh Mineral Development Corporation filed a writ petition No. 153/2016 before Hon'ble high Court, Chhattisgarh, Bilaspur which was decided by Single bench of Hon'ble high Court, Chhattisgarh vide order dated 9-10-2017. Hon'ble High Court set aside the award only w.r.t. Chhattisgarh Mineral Development Corporation and maintained it w.r.t. MP State Mining Corporation with a direction that the matter be remitted to the Tribunal again for hearing and parties were directed to appear before this Tribunal on 30-11-2017. This order of Hon'ble High Court was received by Tribunal and as per order dated 15-1-2018 passed by my learned predecessor, matter was taken again. None of the parties appeared before the Tribunal on the date fixed by Hon'ble high Court Chhattisgarh. Hence notices were ordered to be issued to the workman and Chhattisgarh Mineral Development Corporation by my learned predecessor. The workman side appeared in response to the notice but none appeared for Chhattisgarh Mineral Development Corporation. Hence on 10-6-2019, keeping in view that inspite of clear direction of Hon'ble High Court, the Chhattisgarh Mineral Development Corporation did not appear before this Tribunal on the date fixed by the Hon'ble High Court as directed by Hon'ble High Court and also that they did not appear inspite of notices sent. They did not even file any statement of defence or any evidence in support of their case. Date 9-7-2019 was fixed for final argument. The Chhattisgarh Mineral Development Corporation was still given liberty to put its presence till or before date fixed following which the case to still proceed exparte against Chhattisgarh Mineral Development Corporation. On 9-7-2019 also, none appeared on behalf of Chhattisgarh Mineral Development Corporation. Hence the case has proceeded again exparte against Chhattisgarh Mineral Development Corporation and arguments of learned counsel of workman Shri A.K.Shashi were heard.

9. Following issues were framed by my learned predecessor in the award in this case which is affirmed by the High Court:-

(1) Whether the action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Devendra Pratap Bahadur Singh, Ex-Supervisor is justified?

(2) If not to what relief the workman is entitled for?

10. **Point No. 1**- Workman has stated that he was appointed as watchman at Jagdalpur office as per order dated 1-7-85 Exhibit W-1. He was terminated from service without issuing chargesheet or conducting enquiry. No notice was issued to him. his services were terminated within six months of his reinstatement revoking order of his suspension. His services were discontinued on ground that his services were not required. Workman has produced documents Exhibit W-1 to W-4. In his cross-examination by advocate Srivastava, workman says he was working as watchman at Village Pushpal. He was not doing digging work. In the year 2000, MP State was bifurcated and new state of Chhattisgarh was established. At the same time Chhattisgarh Mineral Development Corporation was established. He was working in Chhattisgarh Mineral Development Corporation. IInd party did not participate in reference proceeding. Workman was not cross-examined. Management has not adduced any evidence.

11. Copy of Madhya Pradesh Re-organization Act 2000 is produced at Exhibit W-5.

Section 82 provides- where immediately before the appointed day, the existing State of Madhya Pradesh is a party to any legal proceedings w.r.t. any property, rights or liabilities subject to apportionment between the states of Madhya Pradesh and Chhattisgarh under this Act, the State, of Madhya Pradesh or Chhattisgarh which succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Madhya Pradesh or added as a party to those proceedings and the proceedings may continue accordingly.

In present case, notice was issued to Chhattisgarh Mineral Development Corporation. However it failed to appear and he has been proceeded exparte. Chhattisgarh Mineral Development Corporation failed to participate in reference proceeding. I find no reason to disbelieve unchallenged evidence of workman. his services are terminated without notice, without issuing chargesheet. Therefore I record my finding in Point No.1 in Negative.

12. **Point No.2**- In view of my finding in Point No.1 termination of services of workman is illegal, question arises whether he is entitled to reinstatement with backwages. The unchallenged evidence of workman is his services are terminated and employees junior to him are continued in service. His affidavit is silent about his gainful employment. Considering above aspects, termination from service as per order dated 25-5-89, workman cannot be allowed full backwages. In my considered view, reinstatement of workman with 40 % backwages would be appropriate. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

**(1) The action of the management of M.P.State Mining Corporation Ltd., Bhopal in terminating the services of Shri Devendra Pratap Bahadur Singh, Ex-Supervisor is illegal.**

**(2) IInd party No. 2 Chhattisgarh Mineral Development Corporation is directed to reinstate workman with continuity of service and 40 % back wages.**

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2019

**का.आ. 1761.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सिक्यूरिटी एण्ड इंटेलिजेंस सर्विस (इण्डिया) लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 07/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.09.2019 को प्राप्त हुआ था।

[सं. एल-29011/30/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th September, 2019

**S.O. 1761.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2012) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Security & Intelligence Services (India) Limited and other and their workman, which was received by the Central Government on 11.09.2019.

[No. L-29011/30/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA**

**Reference No. 07 of 2012**

**Parties:** Employers in relation to the management of M/s. Security & Intelligence Services (India) Ltd., an agency of Madras Cement Ltd.

**AND**

**Their workmen**

**Present:** Justice Ravindra Nath Mishra, Presiding Officer

**Appearance:**

| | | |
|---|---|---|
| On behalf of the Management | : | Mr. R. De, learned counsel for Madras Cement.<br>Mr. A. Kukherjee, learned counsel with Mr. M. Mukherjee, learned counsel for M/s. Security & Intelligence Services (India) Ltd. |
| On behalf of the Workmen | : | None |

Dated: 2nd September, 2019 Industry: Cement.

**AWARD**

By Order No.L-29011/30/2011-IR(M) dated 21.05.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

*"Whether the action of the management of M/s. Security & Intelligence Services (India) Limited an agency of Madras Cement Limited in terminating the services of Shri Krishna Thapa and 12 others (List enclosed) w.e.f. 28/3/2010 is legal and justified? What relief the workman are entitled?"*

2. When the case was taken up for hearing on 21st August, 2019, none appeared for the union, though learned counsel for M/s. Security & Intelligence Services (India) Ltd. and also for M/s. Madras Cement Ltd. were present. Despite giving sufficient opportunity to the union, no evidence was adduced by the union. Hence, Opp. Party M/s. Security & Intelligence Services (India) Ltd. also closed its evidence. Madras Cement Ltd. did not adduce evidence, but pressed its application for deletion of it's name as Madras Cement Ltd. is in no way concerned with the order of reference.

3. It is submitted by the learned counsel for Madras Cement that there is no employer – employee relationship between the company and the terminated workmen. The schedule to the order of reference also suggests that the dispute was also referred with regard to action of the management of M/s. Security & Intelligence Services (India) Ltd. in terminating the services of the workmen. It is further submitted that the terminated workmen were employees of M/s. Security & Intelligence Services (India) Ltd. and their services were also terminated by the above agency.

4. The learned counsel for M/s. Security & Intelligence Services (India) Ltd. opposed to deletion of name of Madras Cement, but failed to demonstrate as to how Madras Cement was employer of the terminated workmen. Contrary to it, it has been admitted by the agency that the workmen used to work at Madras Cement at Kolaghat site way before the agency was appointed at Madras Cement and the said workmen were shifted from the previous employer to the answering Opposite Party in the year 2017. It has also been admitted that services of affected workmen were terminated by the Opposite Party agency as its contract with Madras Cement could not be renewed.

5. No evidence, either oral or documentary, has been given to establish that there existed employer and employee relationship between the terminated workmen and the Madras Cement. From the affidavit filed by the agency it appears that Madras Cement had given a contract to the agency which deployed the terminated workmen in its employment from previous contractor and when the contract of service with Madras Cement came to an end, they terminated the services of the affected workmen.

6. Hence, In view of above, it is established that there existed no employer and employee relationship between the terminated workmen and Madras Cement. Though the application for deletion of name is pending before this Tribunal, but at this stage the order of deletion of name has become redundant in view of finding that no employer – employee relationship existed.

7. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of 13 concerned workmen as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

8. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 2nd September, 2019

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.